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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

INDEX

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERMANENT INDEX

Cumulative from

March 9, 1978 to December 31, 1980*

Harald R. Leuba, Editor

*This is the first permanent index published by the FMSHRC; it provides complete coverage for all commission activity for 1978, 1979 and 1980. This is a permanent index. It will not be updated. Decisions occurring after December 31, 1980 will be found in a subsequent index.

FOREWORD

This volume is the first permanent index of a series of indexes of the Federal Mine Safety and Health Review Commission (FMSHRC) decisions which are to be published as a part of a program to make its decisions more accessible to the public. This volume covers all FMSHRC decisions from the time the Commission was established by law (March 9, 1978) through December 31, 1980. This index was prepared pursuant to contract with CONTEXT, Inc., who used as a source for the summaries of precedential cases, material copyrighted by The Bureau of National Affairs (BNA). The materials in this index may be reproduced without restriction, except for the case summaries and the BNA topical index codes, which are included here for reader convenience in cross reference to that public source.

The Commission has appreciated comments received to date and welcomes additional comments from users suggesting corrections or improvements which could be made.

RICHARD V. BACKLEY
CHAIRMAN
Federal Mine Safety and Health Review Commission

Washington, D.C.
April, 1981

ACKNOWLEDGEMENTS AND DISCLAIMER

We have been careful in preparing this index. We have relied upon what we believe to be reliable sources. We have been diligent in checking and double checking our citations and in making every effort to eliminate errors and to maintain consistency. In these efforts we have been aided by the staff at the Federal Mine Safety and Health Review Commission, particularly Mr. Robert Phares, and by the resources of The Bureau of National Affairs, especially Mr. Stanley J. Gilbert. Notwithstanding their conscientious support, and our own efforts, there are sure to be occasional entries here which will seem out of place to some users, and other entries which some users may insist we missed. We would be delighted to have such errors of comission and omission pointed out so that we might correct them in future indexes. In the meantime,

(1) While we are appreciative of the support given us by FMSHRC and BNA, responsibility for the quality of this index must rest on the index editor's shoulders.

(2) Users to whom issues of citation relevance are critical should refer to the primary sources, i.e. the decisions, and exercise their own judgement.

We wish to acknowledge the conscientious support of, Information Consultants, Inc. (ICI) of Washington, D.C. The two major sections, "Table of Cases" and "Code Table" were compiled and produced for this pubication, on ICI's on-line Legal Information Retrieval System.

Harald R. Leuba,
Editor
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Washington, D.C. 20009

READEX FICHE

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GUIDE TO USERS

This index is largely self explanatory. If you have trouble finding what you are looking for, the rest of this "GUIDE TO USERS" may be helpful. If you are curious about the conventions used in this index, review the "NOTES AND COMMENTS" section.

GUIDE TO USERS

This index has five parts: two sections of explanation (this one and the NOTES section below) plus three sections of index:

I. Table of Cases

II. Code Table

III. Cross Reference File

This section provides a detailed outline of what is contained in the index itself. (The "NOTES AND COMMENTS" section discusses the conventions that were used in developing the index as well as some less than obvious techniques for using it.)

The index is organized to help you find:

- A case when you know the name of a nongovernment party (use the Table of Cases or Cross Reference File);
- "All" the cases related to a particular section of the 1969 or 1977 Acts or to the Code of Federal Regulations (use the Code Table);
- All the cases involving a particular firm (use both the Table of Cases and the Cross Reference File);
- What happened next in a particular sequence of legal actions (use the Table of Cases and the Cross Reference File);
- The text of the original decision (refer to the page number cited in the Table of Cases or the Code Table);

and

- Other decisions which may be related by subject matter (follow the BNA Topical Outline codes into the BNA Mine Safety & Health Reporter --Decisions.)

The TABLE OF CASES lists all FMSHRC (RC) or Administrative Law Judge (ALJ) decisions. The decisions are listed in alphabetical sequence by the name of the nongovernmental party involved. (The Table excludes, for obvious reasons, governmental parties, e.g., FMSHRC, Secretary of Labor, MSHA, etc.) If there is more than one nongovernmental party in the decision caption, the Table of Cases is alphabetized for the first nongovernmental, nonunion party mentioned.

If the party or case you are looking for is not in the Table of Cases, refer to the Cross Reference List at the end of the index.

The CODE TABLE presents case identification information (see below) for every case in which any particular section of code or law was important.

A user concerned with a particular portion of regulation or code will find the code sections listed in sequence, starting with the provisions of the Federal Metal and Nonmetallic Mine Safety Act of 1966; proceeding through the Federal Coal Mine Health and Safety Act of 1969 and the Federal Mine Safety and Health Act of 1977; on through the provisions of the Commission's Rules (29 CFR Part 2700); and finally to the mandatory standards of Title 30 CFR Chapter I, etc.

The CROSS REFERENCE LIST gives:

- Alternative forms of the name (e.g., because we alphabetize all names from left to right, there are some opportunities for confusion. Jim Walter Resources Co., is in the Table of Cases under "J"; and so is James Oliver. Neither name is inverted. If you look in the Cross Reference File under "W", as in "Walter, Jim", you will be referred back to the form we used.)

- The name of the first mentioned litigant for cases involving more than one company and/or several individuals (the Cross Reference File sends users to the name we used in the Table of Cases.) (A special example of this is cases in which a union was one of the parties. If the union was the

only nongovernment party, the case is listed in the Table of Cases under the union's name. If there was a nonunion nongovernment party, the case is listed in the Table of Cases under that party's name and the Cross Reference File lists that case under the union's name.)

- The name of the parent corporation for subsidiary litigants sometimes referred to in litigation;

- The name of the entity under which some individuals do business (e.g., James Oliver does business as the "Oliver Mine Maintenance Company");

and

- The docket number under which cases are indexed in those rare situations where, during its life, the case has been referred to by more than one docket number. (Docket numbers may have changed due to error in titling the case or due to a combining of dockets.) If you look up a name and docket number in the Table of Cases and can't find the decision, and you do find it in the Cross Reference File, the Cross Reference File will tell you how it is docket numbered in the Table of Cases.

The Cross Reference File can also be used as a complete table of cases for any given litigant.

TABLE OF CASES

The Table of Cases lists "all" decisions of the FMSHRC and its Administrative Law Judges from the establishment of the Commission (March 9, 1978) through December 31, 1980, plus related decisions issued by higher courts either on appeal of Commission decisions or from other actions. (The Table of Cases does not however, include higher court actions which did not originate in decisions of the Commission or its judges.) The decisions are sequenced alphabetically. The alphabetical technique used is left to right, without inversions. (In this technique, John Smith is sequenced under the "J"s, rather than under the "S"s as in Smith, John. This technique is easier for a computer generated sequence and it avoids having to decide which names to invert, as, e.g. in "John R. Sand and Gravel.") In order to save space, each decision is listed only once. If there are two parties, it is alphabetized under the first mentioned nongovernmental party. If there are more than two parties, the case is alphabetized under the first nongovernment, nonunion party. If the case was carried forward or if the litigant was involved in more than one case, the cases under each name are listed by docket number and date within docket number.

Figure 1 is a sample format from the Table of Cases.

The Table of Cases gives an encapsulation of every decision listed. For precedential cases this encapsulation is in narrative form. For all decisions, the encapsulation is in code form. This "code" form includes both case ID information and case "code" citations.

The individual case identifying information includes:

- Party
- Docket Number (including a cross reference to IBMA number if appropriate)
- Date (of the Decision)
- Tribunal

and
- Volume, part and page number*

The identifying information also includes an arbitary record ID number that we used within the computer for keeping track of the decisions. We have kept this number on this printout because it will be helpful if corrections are required.

FIGURE 1: FORMAT FROM TABLE OF CASES

870
AMERICAN COLLOID COMPANY
CENT 79-152-M
June 20, 1980
ALJ - Pending

30 CFR 55.15-5
30 CFR 55.14-4
30 CFR 55.12-18

735
AMERICAN SAND & GRAVEL COMPANY
BARB 79-209-PM
March 31, 1980
ALJ - Final
3/80 p763

30 CFR 56.9-7
30CFR 56.11-12
30 CFR 56.14-1
30 CFR 56.11-1

503
AMHERST COAL COMPANY
HOPE 78-315-P
April 5, 1979
ALJ - Final
4/79 p92

30 CFR 75.400
30 CFR 75.200
30 CFR 75.1103-4
30 CFR 75.302-1
30 CFR 75.402
30 CFR 77.205(a)
30 CFR 75.514
30 CFR 75.518
30 CFR 75.604
30 CFR 75.517

204
AMHERST COAL COMPANY
HOPE 78-98
March 17, 1978
ALJ - Final
Unbound

69: 104(b)

769
AMHERST COAL COMPANY
HOPE 79-128-P
February 26, 1980
ALJ - Final
2/80 p597*

Scoop with frozen emergency switch, exposed lead wires, exposed moving universal and no fender over left drive wheel, and coal drill with damaged stop and start switch and disconnected deenergizing device, were not in safe operating condition as required by 30 CFR 75.1725 because conditions exposed miners to serious injury.

30 CFR 75.1725
MECHANICAL EQUIPMENT - Mobile Equipment - Lack of Maintenance - Unsafe Operating Condition, 75.1725

426
ANSCHUTZ COAL CORPORATION
DENV 76X-138
August 10, 1978
ALJ
Unbound

69: 110(b)

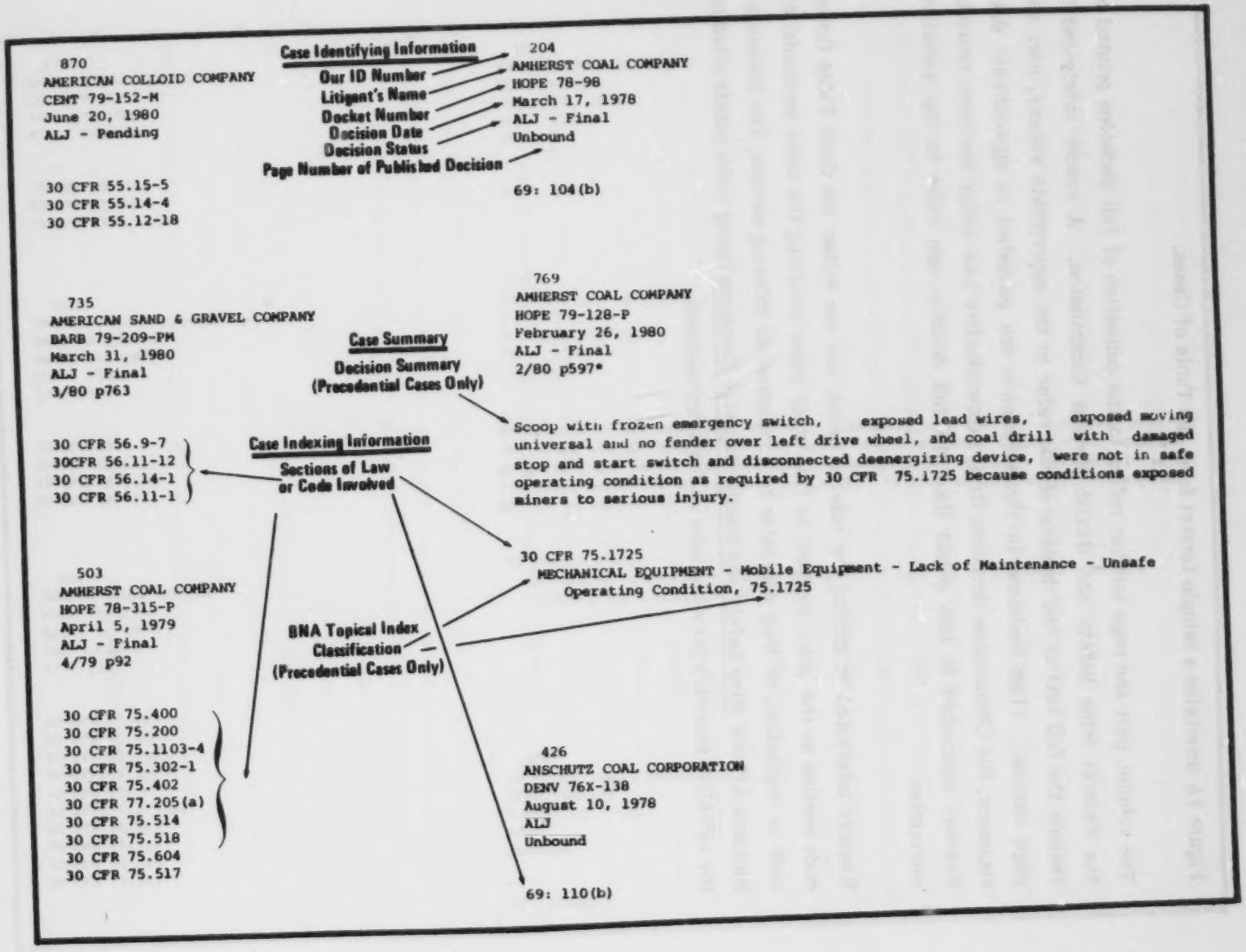
Figure 1A annotates a sample format from the Table of Cases.

The volume, part and page number refers to the collection of full decisions printed by the Federal Mine Safety and Health Review Commission. A reader interested in reading the full text of the decision should refer to the appropriate volume, part and page number. (The decisions in those volumes are published in approximate date sequence, full Commission decisions first, Administrative Law Judge decisions second.) Readers interested in less detail than the full decision can refer to the narrative summaries.

Readers interested in looking for related cases, can use either the Code Table (using code section as the entry method) to find other cases involving the same section(s) of code or regulation, or they can refer to a commercial indexing service, The Bureau of National Affairs' Mine Safety and Health Reporter Decisions (using index points cited in the narrative summary provided here as the entry method).

FIGURE 1A: ANNOTATED FORMAT FROM TABLE OF CASES

Cases Listed Alphabetically in two Column Format



CODE TABLE

In the CODE TABLE, decisions are indexed to the sections of code or law which were substantively involved. Figure 2 is a sample page from the Code Table. Figure 2A annotates a sample page from the Code Table.

In the Code of Federal Regulations, we indexed to all the 30 CFR sections related to mine safety and to the 29 CFR sections related to the Commission's final as well as their interim rules. All of these citations are listed as, e.g., 30 CFR 75.1204. (The symbol for "section" has been omitted.)

The laws to which we have indexed decisions include:

- The Federal Metal and Nonmetallic Mine Safety Act, 1966
- The Federal Coal Mine Health and Safety Act, 1969
- The Federal Mine Safety and Health Act, 1977

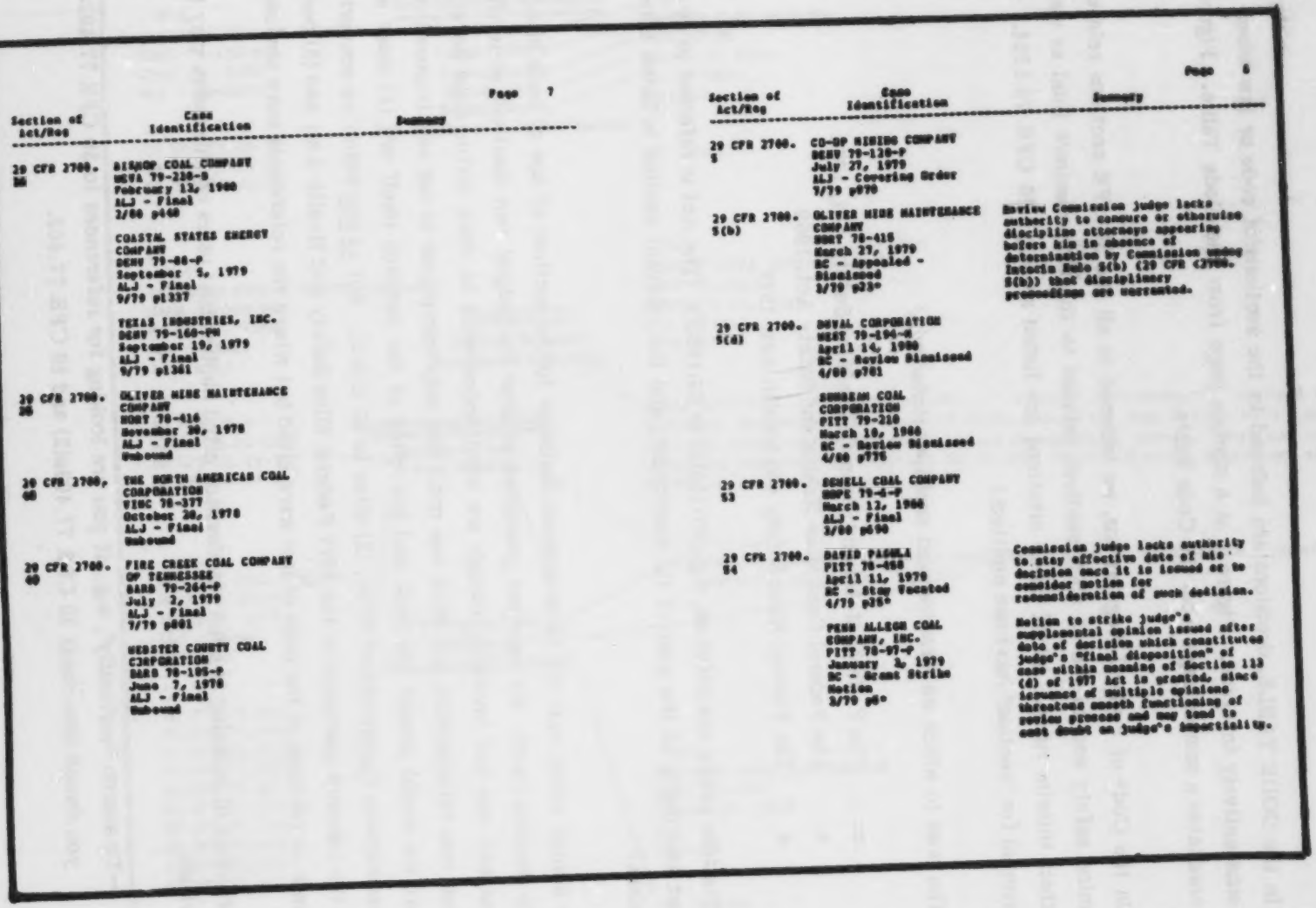
Citations to law are listed as, e.g., 77:103(a) or 69:103(f). (The Act is referred to by the last two digits of the year of its enactment, and the relevant section is listed after a colon.)

In almost every case we have indexed decisions to the sections of law or code cited in the decision itself. We have not presumed to alter the judges' own elections as to what was and was not involved, though we have endeavored to draw distinctions between what was referencable and what was not. The only exceptions to our self imposed rule that we would accept the code and law cites of the decision itself are (1) clear and unambiguous typographical error, (2) cites to 30 U.S.C. 801 et seq which we converted to the relevant section(s) of the 1977 Federal Mine Safety and Health Act; and (3) cases where no sections of the code or law were cited but where the references were obvious.

Our policy of indexing to what the decision cited implies that users of this index may be advised:

—To search "vertically", e.g., if you are looking for references to 30 CFR 77.403a, you should also check 30 CFR 77.403a(2) and 30 CFR 77.403.

FIGURE 2: FORMAT FROM CODE TABLE



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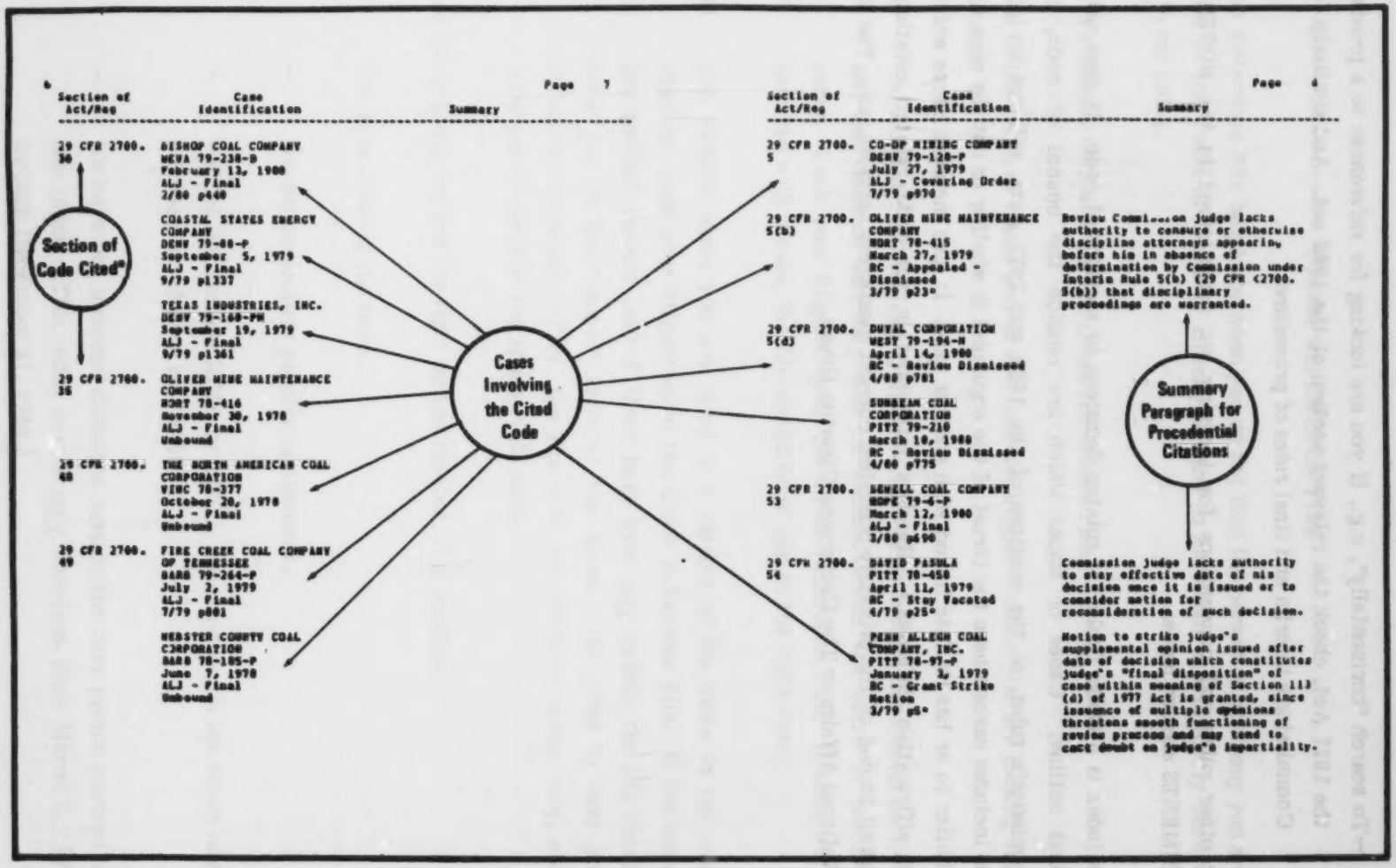
Section of Act/Reg	Case Identification	Summary
29 CFR 2700. 36	BISHOP COAL COMPANY WEVA 79-238-R February 13, 1980 ALJ - Final 2/80 p468	
	COASTAL STATES ENERGY COMPANY DENV 79-88-P September 5, 1979 ALJ - Final 9/79 p1337	
	TEXAS INDUSTRIES, INC. DENV 79-160-PM September 19, 1979 ALJ - Final 9/79 p1361	
29 CFR 2700. 36	OLIVER MINE MAINTENANCE COMPANY HORT 78-416 November 30, 1978 ALJ - Final Unbound	
29 CFR 2700. 48	THE NORTH AMERICAN COAL CORPORATION VINC 78-377 October 30, 1978 ALJ - Final Unbound	
29 CFR 2700. 48	FIRE CREEK COAL COMPANY OF TENNESSEE BARB 79-264-P July 2, 1979 ALJ - Final 7/79 p801	
	WEBSTER COUNTY COAL CORPORATION BARB 78-195-P June 7, 1978 ALJ - Final Unbound	

Page 6

Section of Act/Reg	Case Identification	Summary
29 CFR 2700. 5	CO-OP MINING COMPANY DENV 79-138-P July 27, 1979 ALJ - Covering Order 7/79 p970	
29 CFR 2700. 5(b)	OLIVER MINE MAINTENANCE COMPANY HORT 78-416 March 27, 1979 RC - Appealed - Dismissed 3/79 p23*	Review Commission judge lacks authority to censure or otherwise discipline attorneys appearing before him in absence of determination by Commission under Interim Rule 5(b) (29 CFR 2700. 5(b)) that disciplinary proceedings are warranted.
29 CFR 2700. 5(d)	DUVAL CORPORATION WEST 79-194-M April 14, 1980 RC - Review Dismissed 4/80 p701	
	SUNBEAM COAL CORPORATION PITT 79-210 March 10, 1980 RC - Review Dismissed 4/80 p776	
29 CFR 2700. 53	BENELL COAL COMPANY HOPE 79-4-P March 12, 1980 ALJ - Final 3/80 p690	
29 CFR 2700. 64	DAVID PASKLI PITT 78-488 April 11, 1979 RC - Stay Vacated 4/79 p25*	Commission judge lacks authority to stay effective date of his decision once it is issued or to consider motion for reconsideration of such decision.
	PEAR ALLEON COAL COMPANY, INC. PITT 78-97-P January 2, 1979 RC - Grant Strike Motion 3/79 p6*	Motion to strike judge's supplemental opinion issued after date of decision which constitutes judge's "final disposition" of case within meaning of Section 113 (d) of 1977 Act is granted, since issuance of multiple opinions threatens smooth functioning of review process and may tend to cast doubt on judge's impartiality.

FIGURE 2A: ANNOTATED FORMAT FROM CODE TABLE

Case listed by Code Section in two Column Format



*Note that the code may be typed on two lines.

—To search "horizontally", e.g., if you are looking for references to a provision of the 1977 Act, check the relevant section of the 1969 act. And similarly for the Commission's interim and final rules of procedure.

Our other rules and conventions for indexing are summarized in the NOTES AND COMMENTS section below.

This index is a Code Table. It relates decisions to sections of code. It does not use a topical outline. Cases or issues which are outside the bounds of code, or the Commission's rules, or the sections of the 1969 and 1977 Acts, will not be indexed. (This includes cases where the thrust of the argument is whether or not the case at hand is similar to or has its fate linked with another case. It also includes issues which deal with affirmative defenses.) Readers interested in non-code related citations are referred to one of the privately published current awareness services, viz: The Bureau of National Affairs or The Commerce Clearing House.

CROSS REFERENCE FILE

The Cross Reference File helps you when you do not find the person or company you are looking for in the Table of Cases or when you want to know how a multiparty case is entered in our index.

Figure 3 is a sample format from the Cross Reference File.

If you look in the Table of Cases and do not find the litigant's name you are looking for, it is possible:

(1) The litigant was involved in the case with other non-governmental parties, and the decision summary may be indexed under the name of another party. Look your litigant up in the Cross Reference File. If they were involved with others, the file should refer you to the right case.

(2) The litigant name you are using is a variant of the name in the case ception. Look your litigant up in the Cross Reference File. If the name has another variant (and if there have been <u>any</u> cases), the file should refer you to the "proper" form of the name. (In order to save you additional "look-up" effort, the file will, for personal names only, also refer you directly to the appropriate cases.

If you find the litigant, but not the right docket number, it is possible:

(1) The case is not in the index.

- We did not include penalty settlements.
- We did not include IBMA or BMOA appealed decisions which have not been acted upon by FMSHRC.
- We have not included decisions outside the time period covered by this index. (This index covers <u>only</u> decisions from March 9, 1978 through December 31, 1980.)

FIGURE 3: FORMAT FROM CROSS REFERENCE FILE

Owens, W. J.
see W. J. Owens
Palmer, Ralph
see Ralph Palmer
Paramont Mining Corporation (Proper Spelling)
see Paramount Mining Corporation
Paramount Mining Corporation (VA 79-51)
see Paramount Mining Corporation (NORT 79-81P)
Pasula, David
see David Pasula
Patrick K. Thornton
see Superior Sand and Gravel 6/3/80
Peabody Coal Company
see Kenny Richardson 7/12/79
see Frank J. Bough 6/5/80
Penn Allegh Coal Company
see Penn Allegh Coal Company, Inc.
Perry R. Bishop
see Mountain Top Fuel, Inc. 7/3/79
Peter White Coal Mining Company (HOPE 78-374)
see also Peter White Coal Mining Company (HOPE 78-554)
Peter White Coal Mining Company (HOPE 78-495)
see also Peter White Coal Mining Company (HOPE 78-374)
Philip Jones
see FMV Coal Corporation 2/26/80
Phillip Springer
see FMV Coal Corporation 2/26/80
Pittsburgh & Midway Coal Mining Company
see The Pittsburg & Midway Coal Mining Company
see also "Pittsburg" without final h
Pittsburgh Coal Co
see also Consolidation Coal Co., Division of
Plute, Bryan
see Bryan Plute
Pompey Coal Co., Inc.
see C.C.C. Pompey Coal Co., Inc.
Prater, Frankie
see Frankie Prater
Propst, Everett
see Everett Propst
Pyro Mining Company
see James F. Crumbker
Quarto Mining Company
see The North American Coal Corp. 2/12/80
Ralph D. Orr
see Youghioghney & Ohio Coal Co. 1/16/79
Ralph Palmer
see David Pasula 3/5/79
see David Pasula 3/29/79
see David Pasula 4/11/79
Randy Inman
see Mid Ohio Mining Company 8/29/79
Ratlift, Ronnie
see Ronnie Ratlift

— We may have missed it. (If so, please notify us and we will include it in the next edition of the index.)

(2) The case is in this index, but its docket number has changed.

— There may be an error or "restyling."

— The docket number may have been combined with other docket numbers.

In both of these instances we have made an entry in the Cross Reference File. If you find your litigant and docket number there, it will refer you to the docket number used in the Table of Cases and Code Table.

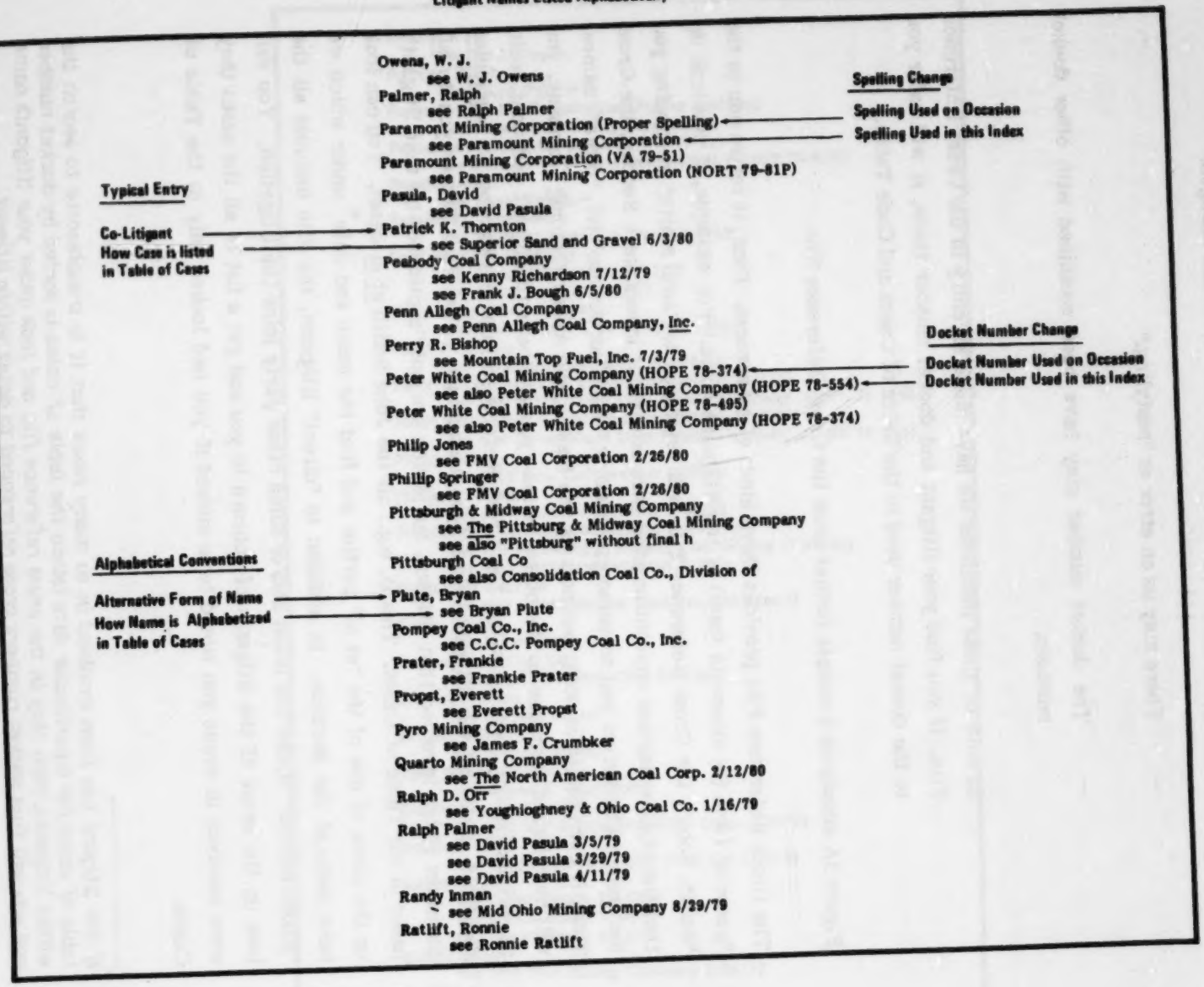
Figure 3A annotates a sample format from the Cross Reference File.

The Cross Reference File provides three kinds of references. First, it refers you to the "generic" form (or alternate form) of the litigant's name. For example, if you look up "Smith, John", the Cross Reference File will refer you to "John Smith" (reminding you that the alphabetization convention used here is without inversions.) Second, the Cross Reference File refers you to unincorporated or "doing business as" (cf, "d/b/a") names. Thus, if John Smith is doing business as the Hawaii and Alaska Trading Company, you will be referred from one to the other, so that you will be notified that decisions could be written either way. Finally, the Cross Reference File directs you to <u>particular</u> decisions involving the litigant whom you looked up. The File directs you to <u>all</u> decisions which involved that litigant, but which are not "captioned" by that litigant's name in our Table of Cases. This is, e.g., all the John Smith <u>et al</u> cases. You can look up the name of one of the "et al" parties and find the name and date* under which we have indexed the decision. In addition to "direct" litigants, the File includes all the "joined actions" where the union and/or some other party joins the litigation. You can look up the name of the litigants of concern to you and get a list of all the cases they were involved in which you would have missed if you had looked only in the Table of Cases.

** If the litigant has been involved in so many cases that it is troublesome to search the table of cases for a particular date (since the table of cases is sorted by docket number within litigant), then stay in the cross reference file and look under your litigant's name and you will find docket numbers cross referenced to dates within litigant.*

FIGURE 3A: ANNOTATED FORMAT FROM CROSS REFERENCE FILE

Litigant Names Listed Alphabetically



This Cross Reference File can be used alone. For multiple party cases it includes an entry for every case under the name of the litigant who was used to caption the case, plus cross references for all of the litigants who were not used to caption the case. Thus, under every litigant's name you will find a list of all the cases in which they were involved — whether as principal litigants, co-litigants or intervenors.

NOTES AND COMMENTS

This section discusses the conventions used in preparing this volume, including the indexing conventions. In addition, it discusses some less than obvious ways of using the index.

Using The Index

If you want to see all the decisions involving a particular litigant, you have to consult only one listing. The Table of Cases will give you all the cases where your litigant was either the only nongovernment party, or was the first nongovernment, nonunion, nonindividual party in a multiple litigant case, but the Cross Reference File will list all of those cases plus it will direct you to all the multiple party decisions where your party was not the first mentioned nongovernment, nonunion, nonindividual party.

There are ways of getting an overview of a case without resorting to the printed decisions. First, for cases which we have judged to be precedential,* we have included a narrative summary of the major points. Second, one can scan the set of CFR codes, etc., listed as index points and gain a perspective on the decision issues as a whole. Much can be deduced from the section of law cited. Cases dealing with who is subject to the Acts, MSHA's rights to inspect, discrimination, compensation, withdrawal orders and the reviewability of citations will stand out. So too will civil penalty cases. If the processes of penalty assessment are under discussion, the decision will be indexed to relevent law or rule, e.g., 77:110(i), or 69:109(a)(1), or 29 CFR 2700.30, or even 30 CFR 100.3. If the case was little more than the assessment or acceptance of penalties, it will be indexed as "PS," or "PA," (for Penalty Settlement, or Penalty Assessment). If the decision lists sections of 30 CFR Code only, with no reference to sections of the 1969 or 1977 Mine Safety Acts, the decision was probably a contest of citation or a civil penalty proceeding and at least some of the violations involved disputable facts, special interpretations, or unusual conditions. If there are a great many Code sections listed, it is probable that no one of them is discussed in more than a paragraph or two.

This includes virtually all published Commission decisions and their follow-up in Federal Court, as well as many of the ALJ decisions.

If the case cites, e.g. 77:104(a) and one section of 30 CFR, it is probably a case contesting the validity of an order issued under section 104(a) of the 1977 Act alleging violation of the cited section of 30 CFR. The validity may go to the party receiving the citation or to the substance of the alleged violation. If the case cites 77:103(a) and/or 77:3(h)(1), the respondent was cited for refusal to permit inspection and his grounds were that he was not covered by the Act.

If the case has no code or law citations at all, it is either a procedural action (continuance, ruling on a motion, remand, disciplinary note, etc.) or it is a general opinion or ruling made without reference to code or law.* (In a few of the latter cases, we have imputed a section of code or law and indexed the decision there.)

Finally, readers can have access to something of the litigatory history of each case by looking at the cases listed next to it in the Table of Cases. To the extent that the alphabetization and captioning is as consistent as we tried to make it, all of a case's judicial events will be listed together, in date sequence, in the appropriate alphabetical location in the Table of Cases.**

The fact that no law or code is cited need not imply that the issue is unimportant. On the contrary it can be critical, as, for example, in the Pittsburg and Midway Coal Mining Company, February 8, 1980, wherein the issue is again raised as to whether it is proper for MSHA to cite the mine operator for violations committed by independent contractors over whom the operators have no authority and whose actions do not put mine employees at risk.)

**If the page numbers are the same, and the ID numbers are sequential, then it is really only one decision. The "extra" record was necessary in order to hold all the code citations. We set up the computer so that it could hold 12 code citations and had to make "continuation" records if the case involved more than 12 code citations. (If we had set the computer up to handle any number of code citations, we would have had to reserve too much computer capacity.)*

Readers should notice that the litigatory history of each case is available only in the Table of Cases. It is not available in the Code Table as little purpose would be served there, and much space would be consumed, by repeating under a cited section of code each of the litigatory steps in a case involving that section of Code or law.

Conventions (Code and Law Citations)

Indexing is a judgement call. We tried to use conventions which would strike a useful balance between indexing every single mention of a code or law, whether the points or facts were at issue or not, and indexing only if the validity of the law itself was in question.

We indexed to sections of code:

- if the facts or their interpretation were in dispute
- if the facts were precedent setting
  - interpreted with precedent setting implications
  - seen as justifying either larger or smaller penalties than usual
- if the infraction alleged was
  - hard to demonstrate
  - infrequently brought to hearing
- if the citation was vacated on the basis of analysis/argument/logic, even if it was provided by the judge.

We indexed to sections of law:

- if their validity was challenged
- if their applicability was challenged.

But we did not index all the cases which raised particular, unsuccessful challenges. (For example, we only indexed the first flurry of challenges to 77:104(a) and 77:105.)

We indexed to law regarding penalty assessment cases only if:

- penalty assessment was the only issue at hand (the violations having been stipulated to), in which case we used "PA" as the index point, or

- penalty assessment was a central issue in the case (ability to pay, diligence in abatement, past record of violation, etc.), in which case we used the relevant section of the 1969 or 1977 Act.

We indexed to Commission rules whenever possible,* e.g.,

- 29 CFR 2700.26(c) was cited even when not itself the subject of the action (you might care what happens if you don't show up at a scheduled hearing).

- 29 CFR 2700.30 was imputed in a case where an initial penalty settlement proposal was rejected by a judge and a revised settlement proposal was accepted.

On the theory that many users (including MSHA inspectors) might be concerned about "successful" arguments that violations did not occur, or that citations were improperly issued, we have used a rather less stringent criterion for "substance" in indexing dismissed petitions and vacated citations than we used in indexing upheld petitions and assessed penalties. For example, if the facts of the case are stipulated to and an affirmative defense convinces the judge to vacate an order, we indexed the decision to the alleged violation even though the facts of the case were not in contention. On the other hand, if the judge had assessed a penalty - - i.e., not been persuaded by the affirmative defense - - we would not have indexed the decision to the alleged violation. (At first glance this might look as though it gives users an opportunity to see which defenses work, but it deprives them of the opportunity to observe which defenses do not work. Such a construction however is too limited. The plausible, but not successful, defenses have been laid to rest in precedential cases and are recoverable via direct reference to the section of the code or law to be relied upon (who is covered, who is liable, timely filing, exhaustion of review, "independent contractor", etc.))

** This edition of the Index has distinguished between the Commission's Interim and its permanent rules. If the citation is to an interim rule, we have appended a parentheses, capital "eye": (I), so that 29 CFR 2700.5 (I) is interim rule 5 and 29 CFR 2700.5 is final rule 5.*

Conventions (Other)

As a general rule, litigants' names are spelled here the way they are spelled in the decision. This means that some litigants are referred to as the "ABC Coal Co." or "XYZ Coal Corp." and others are listed as the "DEF Coal Company" or the "UVM Coal Corporation." On the other hand, if a particular litigant has been involved in more than one decision, we have tried to be consistent across decisions in how the firm's name is presented. (That consistency makes it easier to list litigants in an alphabetical sequence, even if it alters a minor matter in the case caption.)

The docket number listed is the first docket number mentioned in the decision. This is essential in telling decisions apart which deal with the same parties. It is not infallibly useful for tracking litigatory history. Dockets can be combined, adjudicated, appealed, separated, and reviewed, etc. When dockets have been combined after initial ALJ orders have been issued, the Cross Reference File will direct you to "the" docket number used to keep track of the case. Furthermore, on those rare occasions where a case or decision has been inadvertantly styled with a docket number other than the one already used in the index, the Cross Reference File will lead you to the "right" docket number.

The page number in the FMSHRC bound DECISIONS volumes is listed as:

N/A — Not Applicable (e.g., Court Case)
Unbound
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or as an entry of the form:

3/80 p 143*

where:

"3/80" refers to the month and year of publication and "p 143" is the page number within that volume. The asterisk denotes a precedential case — i.e., a case with a summary published here. (Readers are cautioned about the use of these summaries. First, they are reproduced here with the permission of the copyright owner, The Bureau of National Affairs, and should not be further reproduced without their permission. Second, for some of those cases marked N/A* the order may have been designated as not for publication. Rule 8(f) of the

court provides as follows: "Unpublished orders, including explanatory memoranda of this Court, are not to be cited in briefs or memoranda of counsel as precedents. However, counsel may refer to such orders and memoranda for such purposes as application of the doctrines of res judicata, collateral estoppel and law of the case, which turn on the binding effect of the judgement, and not on its quality as precedent."

We tried to list company names in the Table of Cases, and put individual names in the Cross Reference File. (For example, in the case involving both Kenny Richardson and Peabody Coal Company, the Table of Cases lists the decision under "Peabody Coal Company" and the Cross Reference File leads you to Peabody from "Kenny Richardson".) We did not put individual names in the Cross Reference File unless they were litigants or co-litigants. (For example, we did not index victims of accidents unless they were parties to a reported decision.)

As a general rule, decision date is the publication date of the decision. In a few cases where this date is illegible in the "Blue Books" (the FMSHRC's series of bound DECISIONS), we have drawn a date from the sequence of the decision within the book or taken one, if available, from other records.

While we have adhered to these general rules with reasonable consistency, they are not absolutes. Both intentional and accidental breeches are to be expected. The former will occur because of idiocyncracies of particular cases; the latter will occur because, in spite of our diligence, errors are inevitable. In selecting these conventions, it was our hope that their general structure would facilitate use of the index.

In several places in these notes we describe the index in terms which imply that we believe it is complete and accurate. We hope that it is complete and accurate, but we know that errors may have occurred.

Readers are encouraged to send comments, suggestions or corrections to:

Harald R. Leuba, Editor
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1730 'K' Street N.W.
Washington, D.C. 20006

TABLE OF CASES

(See Guide to Users, p 5)

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1283
A H SMITH STONE COMPANY
VA 80-2-M
December 1, 1980
ALJ - Final
12/80 p3486*

Operator fails to comply with 30 CFR 56.11-1, which requires that safe means of access be provided to all working places, when feeder is not equipped with steps or handrails and miners must step up, from insecure footing, distance of two feet in order to leave feeder.

30 CFR 56.11-1
TRAVELWAYS - Safe Means of Access to Feeder - Lack of Handrails, 56.11

506
A J GILBERT CONSTRUCTION COMPANY
DENV 78-566-PM
April 5, 1979
ALJ - Review Denied
4/79 p161

30 CFR 56.9-87
30 CFR 56.11-2

1210
A NEIL HUMPHREYS
MORG 78-370
October 26, 1978
ALJ - Final
Unbound*

Motion to dismiss complaint of discrimination on grounds that it was untimely filed will be denied when evidence shows that there are justifiable reasons for delay in filing, as legislative history of Mine Safety and Health Act of 1977 reveals that justifiable untimely filing should not act as bar to complaint.

Safety inspector for United Mine Workers of America is authorized to file complaint as representative of miners under §2700.2(i) of Commission's Interim Procedural Rules if miners are members of UMWA and safety inspector is acting in his official capacity ad agent of UMWA.

Complaint of discrimination against Mine Safety and Health Administration and West Virginia Department of Mines must be dismissed because rights granted by §105(c) of Federal Mine Safety and Health Act of 1977 arise from employment relationship, a relationship to which neither party is privy.

Mine Safety and Health Administration and coal company's decision to terminate investigation of mine accident is not grounds for cause of action for complaint of discrimination filed by representative of deceased miners under §105(c) of Federal Mine Safety and Health Act of 1977, because sanctions cannot be imposed unless there is showing that miners have overtly asserted some right or engaged in some protected activity.

COMMISSION PROCEDURE - Initial Filing -- Timeliness -- Justifable Delay, 35.103 30.03
29 CFR 2700.2(i)(I)
COMMISSION JURISDICTION - Parties -- Standing -- Safety Inspector as Representative of Miners, 35.04
77: 105(c)
COMMISSION JURISDICTION - Parties -- Scope of Act's Coverage, 35.04 30.01
77: 105(c)
COMMISSION JURISDICTION - Stating Valid Cause of Action -- Protected Activities, 35.01 30.051

887
A. T. COLLINS
78-3125
May 22, 1980
6th Cir Court
N/A*

(Appealed - Reference Supreme Court Docket Number 80-414)

United States is not liable under Federal Tort Claims Act for injuries and deaths of miners in mine explosion because of its failure to inspect mine in accordance with requirements of 1969 Act since abnormal and impermissible practices of operator in using explosives were unforeseeable acts of intervening negligence which supersede any negligence of MESA inspectors.

FEDERAL TORT CLAIMS ACT - Government Liability - Failure to Inspect - Mine Explosion - Intervening Negligence, 13.01 22.01

1235
A. T. COLLINS
80-414
November 3, 1980
US SUPREME COURT
N/A*

(Reference 6th Cir. Number 78-3125)

The petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is denied.

774
ACE DRILLING COAL COMPANY
PITT 75-1-P
April 24, 1980
RC - Appealed
4/80 p790*

(Reference Old Docket Number IBMA No. 76-60 and 3rd Cir. Number 80-1750)

Mine operator is liable for violations of foreman regardless of whether operator could have foreseen foreman's irresponsible action and prevented violation because acts of foreman are acts of operator and Federal Coal Mine Health and Safety Act of 1969 did not condition liability on fault.

Violation of requirement of 30 CFR §77.1605(d) that horn on front-end loader be operable can be found if violation existed at time it was cited by inspector; it is not necessary that condition exist prior to issuance of citation and contribute to accident.

AGENTS OF OPERATORS - Foreman - Liability - Foreseeability and Prevention of Violation, 20.80
30 CFR 77.1605(d)
HAULAGE - Inoperable Horn - Front-end Loader - Cause of Accident, 77.1605

183
ACME CONCRETE COMPANY
DENV 79-123-PM
December 18, 1979
ALJ - Final
12/79 p2066*

(Reference Docket Number 79-124-PM)

Radial cracks in windshield of front-end loader constituted violation of 30 CFR §56.9-11, which does not specifically prohibit cracked windshields, but requires that windshields be maintained in good condition.

Failure to equip unguarded surge conveyor with walkway alongside with emergency stop device constituted violation of 30 CFR §56.9-7, since "walkway" is construed to be any place where miners could reasonably be expected to walk.

30 CFR 56.9-11
LOADING - Front-end - Windshield Crack, 56.09
30 CFR 56.9-7
HAULING - Unguarded Surge Conveyor - Walkway - Stop Device - Use of Miners, 56.09

709
ACME CONCRETE COMPANY
WEST 79-214-M
February 22, 1980
ALJ - Final
2/80 p515*

(Reference Docket Number WEST 79-279-M)

Responsibility of securing gas cylinders rests on operator under 30 CFR §56.16-5 and fact that independent vendor failed to secure cylinders on delivery is no defense to operator's alleged violation of standard.

Operation of loaders without backup alarms or persons acting as observers violated 30 CFR §56.9-87 because operators' obstructed views exposed employees in cited area to hazard when workers left equipment.

30 CFR 56.16-5
MATERIALS STORAGE & HANDLING - Failure to Secure Gas Cylinders - Vendor - Responsibility of Operator, 56.16 37.20
30 CFR 56.9-87
LOADING - Lack of Backup Alarm - Employee Exposure to Hazard, 56.09 37.15

1087
ADAMS STONE CORPORATION
KENT 80-67-M
June 30, 1980
ALJ - Review Denied
Unbound

1074
AFFILIATED AGGREGATES
CENT 80-90-M
August 27, 1980
ALJ - Final
8/80 p2454*

(Reference docket Number CENT 80-151-M)

Citation issued for violation of 30 CFR 56.3-2, which requires that loose, unconsolidated materials be stripped for safe distance, must be vacated when citation was issued as result of visual observation and there was no way to tell whether or not material was loose, and operator established that one big stone was not loose and could not be removed by normal scaling or blasting operations.

Explosive magazine, which is constructed of metal and which is not equipped with electrical ground, creates hazard to persons working in area in case of electrical storm and violates provisions of 30 CFR 56.6-20(e).

Provisions of 30 CFR 56.5-50(a) establish maximum permissible level of noise exposure in sand and gravel operations, and operator violates standard when miners are exposed to levels above maximum and hearing protection is not being used, but fact that operator had constructed sound-resistant cabs in cited area, which at one time had reduced noise exposure to permissible levels, and had made reasonable efforts to insure that miners were wearing hearing protection is taken into account in assessing civil penalty.

30 CFR 56.3-2
GROUND CONTROL - Scaling Loose Materials - Proof of Condition, 56.03
30 CFR 56.6-20(e)
EXPLOSIVES - Storage - Grounding of Magazines, 56.06
30 CFR 56.5-50(a)
NOISE - Permissible Levels of Exposure - Negligence of Operator, 56.05 26.30

1155
AGGREGATE MATERIALS CORPORATION
LAKE 80-152-M
October 6, 1980
ALJ - Final
10/80 p2858

PA

488
ALABAMA BY-PRODUCTS CORPORATION
BARB 77-73
October 13, 1978
ALJ - Review Granted/Vacated
Unbound

69: 104(a)
69: 3(j)

949
ALABAMA BY-PRODUCTS CORPORATION
BARB 77-73
November 28, 1978
RC - Vacating Review
Unbound

227
ALABAMA BY-PRODUCTS CORPORATION
BARB 78-56
June 9, 1978
ALJ - Final
Unbound

69: 104(b)
30 CFR 75.301

226
ALABAMA BY-PRODUCTS CORPORATION
BARB 78-73
June 9, 1978
ALJ - Final
Unbound

69: 104(c)(1)
30 CFR 75.316

278
ALABAMA BY-PRODUCTS CORPORATION
BARB 78-146-P
September 21, 1978
ALJ - Final
Unbound

43 CFR 4.450
69: 109(a)(1)
30 CFR 75.402
30 CFR 75.200

305
ALABAMA BY-PRODUCTS CORPORATION
BARB 78-358-P
November 2, 1978
ALJ - Final
Unbound

30 CFR 75.200

293
ALABAMA BY-PRODUCTS CORPORATION
BARB 78-512
November 1, 1978
ALJ - Final
Unbound

77: 104(b)
30 CFR 75.400
30 CFR 77.202

105
ALABAMA BY-PRODUCTS CORPORATION
BARB 78-601
July 18, 1979
ALJ - Final
7/79 p914*

Violation of 30 CFR §75.200 did not result from unwarrantable failure to comply with roof control plan when

violation was inadvertent and occurred shortly before inspector arrived on scene despite genuine efforts on part of operator to avoid such violation.

30 CFR 75.200
WITHDRAWAL ORDERS - Unwarrantable Failure to Comply -Roof Control - Detection of Violation, 24.20 75.0200

1136
ALABAMA BY-PRODUCTS CORPORATION
SE 79-33
October 8, 1980
RC - Reversing & Remanding
10/80 p2760*

Judge's conclusion, that respirable dust standard, 30 CFR 70.100(b), was unenforceable because definition of respirable dust was particulates 6 microns or less in diameter and Mine Safety and Health Administration's collecting devices were not limited to collecting particles 5 microns or less in diameter, is reversed because in 1977 amendments to 1969 Act Congress repealed 5 micron definition and defined respirable dust through collection devices already approved by Secretary of Interior and Secretary of Health, Education, and Welfare.

30 CFR 70.100(b)
RESPIRABLE DUST - Enforceability of Standard - Definition of Respirable Dust - Congressional Intent, 70.0100

699
ALABAMA BY-PRODUCTS CORPORATION
SE 79-110
February 12, 1980
ALJ - Review Granted
2/80 p407 or 422

77: 202(e)
30 CFR 75.2(k)

705
ALABAMA BY-PRODUCTS CORPORATION
SE 80-41-R
February 14, 1980
ALJ - Review Granted/Vacated
2/80 p467*

Mine operator is not required under §103(f) of Federal Mine Safety and Health Act of 1977 to pay miners' representatives for time they spend accompanying 12 mine inspectors during "blitz" inspection of mine.

77: 103(f)
INSPECTION - Miners' Representative - Walkaround Pay - "Blitz" Inspection, 22.20

272
ALABAMA FUEL COMPANY & BIG FORK MINING COMPANY
HOPE 78-403-P
September 5, 1978
ALJ - Final
Unbound

77: 110(k)
77: 110(i)
PS

787
ALEXANDER BROTHERS, INC.
HOPE 78-161
March 6, 1979
RC
3/79 p17*

(Reference Docket Number HOPE 78162 through 78167)

Review Commission lacks jurisdiction over applications for review filed after expiration of 30-day filing period prescribed in Section 105(a)(1) of 1969 Act.

69: 105(a)(1)
REVIEW COMM JURISDICTION - Late Filing of Applications for Review - 1969 Act, 35.02 35.103

950
ALEXANDER BROTHERS, INC.
HOPE 78-161-P
March 1, 1978
ALJ - Review Granted
Unbound

498
ALLIED CHEMICAL CORPORATION
HOPE 78-722-P
April 3, 1979
ALJ - Review Granted
4/79 p45

30 CFR 75.1404
30 CFR 75.512

1280
ALLIED CHEMICAL CORPORATION
HOPE 78-722-P
December 19, 1980
RC
12/80 p3478*

Standard at 30 CFR 75.1404-1 requires that dual braking system be both present and operable; accordingly, violation of standard can be established by proof that locomotive is not equipped with operable dual braking system or proof that locomotive is operated beyond its design capabilities or at speeds inconsistent with haulage road conditions.

Hearing judge should have made finding as to whether truck emergency brake is part of pneumatic portion of dual braking system and as to reason for failure of pneumatic brake to stop train after electricity was interrupted where violation of 30 CFR 75.1401-1 is charged; accordingly, case is remanded.

30 CFR 75.1404-1
MANTRIPS - Dual Braking System - Operability Requirement, 75.1404
30 CFR 75.1404-1
MANTRIPS - Truck Emergency Brake - Part of Pneumatic Braking System - Failure to Make Finding, 75.1404 35.22

639
ALLIED CHEMICAL CORPORATION
LAKE 79-234-M
October 18, 1979
ALJ - Final
10/79 p1633

PS

626
ALLIED CHEMICAL CORPORATION
WEVA 79-148-D
September 27, 1979
ALJ - Review Granted
9/79 p1451

77: 103(f)
77: 103(i)
77: 105(c)(1)
77: 103(a)

134
ALLIED CHEMICAL CORPORATION
WEVA 79-148-D
December 6, 1979
RC - Dismissed/Appealed
12/79 p1947

(Reference D.C. Cir. Number 80-1021 - consolidated with 79-2503)

77: 103(i)

830
ALLIED CHEMICAL CORPORATION
WEVA 79-148-D
March 21, 1980
RC - Denying Motion
4/80 p778

907
ALLIED CHEMICAL CORPORATION
WILK 79-109-PM
April 24, 1980
ALJ - Final
4/80 p950*

(Reference Docket Numbers WILK 79-110-PM and 79-125-PM)

Platform which is used on irregular basis to adjust feeder and is used seasonally for general maintenance does not qualify as "working place" so that accumulation of muck on platform is not violation of 30 CFR 56.11-1, which requires that safe means of access be provided and maintained to all working places.

30 CFR 56.11-1
TRAVELWAYS - Safe Means of Access to Working Places - Regular Performance of Work, 56.11

976
ALLIED PRODUCTS COMPANY
SE 79-46-PM
September 4, 1980
ALJ - Review Denied/Appealed
9/80 p2517*

(Reference 5th Cir. Number 80-7935)

Operator violates provisions of 30 CFR 55.9-22 which requires that berms or guards be provided on outer bank of elevated roadways when berms along haulage road were washed out and were deliberately allowed to remain open for drainage, in view of obvious safety hazards, and where condition contributed to fatal accident because berm was not adequate to stop vehicle from going over side of road.

Operator, which allows front-end loader to be operated when it knows that vehicle had been leaking hydraulic fluid and had not been repaired, violates provisions of 30 CFR 56.9-2 which requires that equipment defects affecting safety be corrected before equipment is used, because loader's driving and bucket functions were adversely affected by leak and defect contributed to fatal accident.

Operator's removal of roll-over protective structure from front-end loader which is primarily used inside plant area violates 30 CFR 56.9-88 which requires such protective structures on front-end loaders; operator's arguments that equipment was subject to 30 CFR 56.14-13 which requires that front-end loaders be equipped with protective canopies when necessary to protect operator and that no canopy was required because men using loader wore hardhats, is rejected because 30 CFR 56.14-13 does not supersede or negate requirement of 30 CFR 56.9-88.

30 CFR 56.9-22
HAULAGE - Elevated Roadways - Requirement of Berms or Guards, 56.09
30 CFR 56.9-2
HAULAGE - Equipment Defects - Correction Before Use, 56.09
30 CFR 56.9-88 30 CFR 56.14-13
HAULAGE - Front End Loaders - Requirement of Roll-Over Protective Structures, 56.09

1068
ALLIED PRODUCTS COMPANY
SE 80-42-M
August 27, 1980
ALJ - Final
8/80 p2407*

Railroad crossing located in production plant area is subject to provisions of 30 CFR 56.9-59 which require that public and permanent railroad crossings be posted with warning signs or be guarded when trains are passing, and operator violates regulation when hopper car is pushed across intersection and there are no warning signs or another employee guarding intersection.

30 CFR 56.9-59
HAULAGE - Loading, Hauling, and Dumping - Railroad Crossings - Warning Signs Guards, 56.09

1077
ALLIS-CHALMERS CORPORATION
LAKE 80-242-DM
March 28, 1980
ALJ - Review Granted

834
ALLIS-CHALMERS CORPORATION
LAKE 80-242-DM
June 30, 1980
RC - Vacating Review
6/80 p1207

266
AMAX, INC.
DENV 78-300
August 30, 1978
ALJ - Final
Unbound

69: 104(a)
30 CFR 77.1601(d)

427
AMAX CHEMICAL CORPORATION
DENV 78-426-M
August 28, 1978
ALJ - Final
Unbound

77: 104(a)

1052
AMBER COAL COMPANY, INC.
KENT 79-104
August 14, 1980
ALJ - Final
8/80 p2242

PA

473
AMERICAN COAL COMPANY
DENV 78-34-P
August 7, 1978
ALJ - Final
Unbound

69: 109(a)(1)
30 CFR 70.100(e)
30 CFR 77.1104
30 CFR 77.205
30 CFR 77.1105
30 CFR 75.1106-3(2)
30 CFR 75.1722(b)
30 CFR 75.316
30 CFR 75.807
30 CFR 75.1718
30 CFR 75.503
30 CFR 75.1704-2(d)

474
AMERICAN COAL COMPANY
DENV 78-34-P
August 7, 1978
ALJ - Final
Unbound

30 CFR 75.516
30 CFR 75.1103-8(b)

86
AMERICAN COAL COMPANY
DENV 78-525-P
June 29, 1979
ALJ - Final
6/79 p758*

Where MSHA has approved roof control plan and plan does not require individual machine approval, use of roof bolter without approval plate does not violate 30 CFR §75.200.

Fact that roof control plan does not logically require replacement of knocked out roof supports is no defense to violation of 30 CFR §75.200 since under that theory, no roof control plan would ever constitute standard by which control of roof could be evaluated.

30 CFR 75.200
ROOF SUPPORT - Roof Control Plan - Roof Bolters - Approval Plates, 75.0200
30 CFR 75.200
ROOF SUPPORT - Roof Control Plan - Illogical Requirement, 75.0200 37.10

110
AMERICAN COAL COMPANY
DENV 79-218-P
August 19, 1979
ALJ - Final
8/79 p1057*

Failure to close openings in electrical boxes caused by knockouts constitutes violation of 30 CFR §75.512, which requires that electrical equipment be properly maintained to assure safe operating conditions.

Operator violated 30 CFR §75.326 where air current in mine intake air courses was directed to working sections inside mine and not into return and this intake air was main escapeway for mine.

Citation for violation of 30 CFR §75.326 was vacated since inspector's evidence was insufficient to prove that air currents in operating belt haulage entry were used to ventilate working places and evidence established that working section was adequately ventilated.

Since operator and inspector presented contradictory evidence as to whether intake escapeway was in fact marked, charge in violation of 30 CFR §75.1704 was not proved and citation was vacated.

30 CFR 75.512
ELECTRICAL HAZARDS - Maintenance of electric Equipment - Holes in Electrical Boxes - Underground Coal Mines, 75.0512
30 CFR 75.326
VENTILATION - Air Currents - Intake Courses - Underground Coal Mines, 75.0326
30 CFR 75.326
VENTILATION - Air Currents - Belt Haulage Entries - Underground Coal Mines, 75.0326
30 CFR 75.1704
ESCAPEWAYS - Marking - Underground Coal Mines, 75.1704

870
AMERICAN COLLOID COMPANY
CENT 79-152-M
June 20, 1980
ALJ - Final
6/80 p1546*

Operator violates 30 CFR §55.15-5 by allowing employee to work on slippery conveyor belt which is 10 to 12 feet above ground without wearing safety belt, as regulation requires employees to wear safety belts when working in area where there is danger of falling.

Storing gasoline in unmarked plastic milk container violates 30 CFR §55.4-4 which requires that flammable liquids be stored in accordance with standards approved by Mine Safety and Health Administration and that small quantities of flammable liquids be properly labeled.

Operator violates 30 CFR §55.12-18, which requires that principal power switches be labeled to show which units they control, when control panel with eight disconnect switches has dust covering some switches so that labeling could not be seen or read.

30 CFR 55.15-5
PERSONAL PROTECTION - Safety Belts, 55.15
30 CFR 55.14-4
FIRE PROTECTION - Storage of Flammable Liquids - Proper Labeling, 55.04
30 CFR 55.12-18
ELECTRICAL HAZARDS - Labeling of Power Switches, 55.12

735
AMERICAN SAND & GRAVEL COMPANY
BARB 79-209-PM
March 31, 1980
ALJ - Final
3/80 p763

30 CFR 56.9-7
30 CFR 56.11-12
30 CFR 56.14-1
30 CFR 56.11-1

204
AMHERST COAL COMPANY
HOPE 78-98
March 17, 1978
ALJ - Final
Unbound

69: 104(b)

503
AMHERST COAL COMPANY
HOPE 78-315-P
April 5, 1979
ALJ - Final
4/79 p92

30 CFR 75.400
30 CFR 75.200
30 CFR 75.1103-4
30 CFR 75.302-1
30 CFR 75.402
30 CFR 77.205(a)
30 CFR 75.514
30 CFR 75.518
30 CFR 75.604
30 CFR 75.517

769
AMHERST COAL COMPANY
HOPE 79-128-P
February 26, 1980
ALJ - Final
2/80 p597*

Scoop with frozen emergency switch, exposed lead wires, exposed moving universal and no fender over left drive wheel, and coal drill with damaged stop and start switch and disconnected de-energizing device, were not in safe operating condition as required by 30 CFR §75.1725 because conditions exposed miners to serious injury.

30 CFR 75.1725
MECHANICAL EQUIPMENT - Mobile Equipment - Lack of Maintenance - Unsafe Operating Condition, 75.1725

1118
AMHERST COAL COMPANY
WEVA 79-222
July 24, 1980
ALJ - Final
7/80 p1872*

Operator violates 30 CFR §75.200 for failure to comply with approved roof control plan when it holes through accessible area despite absence of permanent support and when it permits machinery to work inby unsupported roof, even though procedure was utilized to cope with problems caused by roof fall in cited area.

30 CFR 75.200
ROOF SUPPORT - Roof Control Plan - Compliance, 75.0200

426
ANSCHUTZ COAL CORPORATION
DENV 76X-138
August 10, 1978
ALJ - Final
Unbound

69: 110(b)

1067
APPLEGATE AGGREGATES
WEST 79-150
August 27, 1980
ALJ - Final
8/80 p2403*

Provisions of 30 CFR 56.14-1 require guarding of exposed moving machine parts which may be contacted by persons and cause injuries, and citation issued for violation of standard must be vacated when cited unguarded vibrator is in position such that worker would be no closer than two to three feet from pinch points, guardrail prevents ready access to vibrator, and equipment is shut down when maintenance is performed.

30 CFR 56.14-1
EQUIPMENT - Guarding Exposed Moving Machine Parts - Likelihood of Injury, 56.14

361
ARCH MINERAL COAL COMPANY
DENV 78-564
February 7, 1979
ALJ - Review Granted
Unbound

786
ARCH MINERAL COAL COMPANY
DENV 78-564
March 9, 1979
RC - Remand
3/79 p19*

Judge's failure to include in order approving settlement of discrimination complaint brought by Secretary of Labor, terms of settlement and statement as to whether complainant agrees to or acquiesces in settlement, requires remand to judge for limited purpose of supplementing record to include such information.

77: 113(d)
REVIEW COMM PROCEDURE- Settlement of Discrimination Complaint- Review by Comm- Remand for Supplementation of Record, 35.40 35.24 30.01

39
ARCH MINERAL COAL COMPANY
DENV 78-564
June 15, 1979
RC
6/79 p471*

Judge's decision vacating temporary reinstatement order after settlement of discrimination proceeding is affirmed upon receipt of assurance that settlement and vacation of reinstatement order were agreed to by miner.

77: 105(c)
DISCRIMINATION - Settlement - Agreement of Miner - Vacation of Reinstatement Order, 30.01 35.40

534
ARCH MINERAL CORPORATION
DENV 79-151-P
May 11, 1979
ALJ - Final
5/79 p380

29 CFR 2700.15(b) (I)

791
ARCH MINERAL CORPORATION
WEST 79-58
February 7, 1980
RC
2/80 p277*

Commission will not consider question of what circumstances, if any, may excuse Secretary of Labor's late filing of penalty proposal under final Commission Rule 27(a) in case which arose during transition period between interim and final rules of procedure, since such question is not squarely presented.

29 CFR 2700.27(a)
REVIEW COMM PROCEDURE-Late Filing Penalty Proposal-Consideration of Issue-Transition Period - Interim & Final Rules, 35.08 35.103

1313
ARIZONA CRUSHING COMPANY
WEST 79-195-M
December 24, 1980
ALJ - Final
12/80 p3736

77: 3(h)(1)
30 CFR 56.14-1

1014
ARKANSAS LIME COMPANY
CENT 79-213-M
September 29, 1980
ALJ - Final
9/80 p2725

30 CFR 56.12-8

308
ARMCO STEEL CORPORATION
HOPE 78-151-P
November 9, 1978
ALJ - Final
Unbound

30 CFR 75.507
30 CFR 75.400

911
ASARCO, INC.
DENV 79-473-PM
April 15, 1980
ALJ - Final
4/80 p920*

There is no violation of 30 CFR 57.3-22 which requires that loose ground be taken down or be adequately supported before any work is done if miners have not yet reached that portion of mining cycle which requires them to support area and thus are not exposed to loose and unconsolidated ground.

30 CFR 57.3-22
GROUND CONTROL - Unstable Ground Conditions - Miners' Exposure - Mining Cycle, 57.03

919
ASARCO, INC.
WEST 79-274-M
June 3, 1980
ALJ - Review Denied
6/80 P1305*

Owner-operator is liable for safety violations committed by its independent contractors, according to commission's holding in Old Ben (1 MSHC 2177), even though Secretary has delayed implementation of rules to proceed directly against independent contractors.

INDEPENDANT CONTRACTORS - Liability of Owner-Operator Under 1977 Act - Secretary's Delay in Implementing New Rules, 37.20

1160
ATLANTIC CEMENT COMPANY, INC.
YORK 79-10-M
October 10, 1980
ALJ - Final
10/80 p2910*

Citation issued for violation of 30 CFR 56.12-30, because ground wire on temporary wiring for outside lighting was severed and wiring was exposed, is vacated since company electrician established that condition pesented no hazard because building was grounded by its ironwork and ground rods, and cited conduit was connected to building ground.

Operator violates requirement of 30 CFR 56.9-2, that equipment defects affecting safety be corrected before use, where Caterpillar Model 773 haul truck was operated with inoperable automatic reverse signal, and operator's argument, that use of signal light system to aid truck driver in backing up was sufficient alternative, is rejected because signal light system was not used in all areas where trucks backed up.

Operator's argument, that 30 CFR 56.9-2 which requires that equipment defects affecting safety be corrected before use is so vague that its application to defective automatic backup alarm on lube truck would violate due process, is rejected because conscientious safety expert, seeking to prevent all hazards which are reasonably foreseeable, would easily recognize hazard created by nonfunctioning reverse signal alarm on equipment such as lube truck.

Citation for violation of 30 CFR 56.9-2, issued because guardrail located on belt was damaged thereby leaving troughing idler exposed, is vacated where reliable testimony established that splice shack where alleged violation occurred was not used, that belt convey tender could only walk on side opposite damaged rail, and that rollers were replaced when belt was shut down.

30 CFR 56.12-30
ELECTRICAL HAZARDS - Temporary Wiring for Outside Lighting-Exposed Wiring-Connection to Building Ground, 56.12
30 CFR 56.9-2
HAULAGE-Caterpillar Haul Truck-Inoperable Automatic Reverse Alarm-Sufficiency of Signal Light System, 56.09
30 CFR 56.9-2
HAULAGE - Vagueness of Standard - Defective Alarm on Lube Truck, 56.09 40.20
30 CFR 56.9-2
HAULAGE - Damaged Guardrail on Belt - Exposed Troughing Idler - Lack of Employee Exposure, 56.09 37.15
30 CFR 50.14-1
30 CFR 50.9-2
30 CFR 56.12-1

1187
ATLANTIC CEMENT COMPANY, INC.
YORK 80-34-M
October 29, 1980
ALJ - Final
10/80 p3155*

Operator violates 30 CFR 56.5-1(a) when crane operator's exposure to silica-bearing contaminants exceeds limits established by standard, and operator may not use affirmative defense of 30 CFR 56.5-5, which allows employees to work for reasonable time in excessive concentrations of airborne contaminants if provided respiratory protection, because employee was not protected by appropriate respiratory equipment even though equipment was clearly available.

30 CFR 56.5-1(a)
AIRBORNE CONTAMINANTS - Exposeure to Silica-Bearing dust - Failure to Wear Protective Equipment, 56.05
30 CFR 56.5-60

43
ATLAS LAND COMPANY, INC.
79-391-B
June 15, 1979
DISTRICT COURT
N/A*

Secretary's application to enjoin operators from interfering with inspections conducted under the 1977 Act is denied because, since it is uncertain whether the sand and gravel business is subject to the kind of pervasive regulation that would allow warrantless inspections, the Secretary has not carried his burden of showing a likelihood of success on the merits.

Operator's application to enjoin inspectors from conducting further warrantless inspection of its sand and gravel operations is denied because, in light of Secretary's policy of not attempting additional warrantless inspections prior to termination of judicial proceedings, operators have not shown they will suffer any irreparable injury if their application is not granted.

77: 103(a)
INJUNCTIONS - Warrantless Inspections - Sand and Gravel Operations - Secretary's Application, 201.12 22.05
77: 103(a)
INJUNCTIONS - Warrantless Inspections - Sand and Gravel Operations - Operators' Application, 201.12 22.05

171
ATLAS LAND COMPANY, INC.
79-391-B
August 31, 1979
DISTRICT COURT
N/A*

Operators' complaints charging that warrantless inspections of sand and gravel pits pursuant to 1977 Act are unconstitutional are dismissed since operators have not exhausted their administrative remedies; Federal Mine Safety and Health Review Commission, which has helpful expertise, is independent of Secretary of Labor, and constitutional adjudication would be avoided if it were to conclude that sand and gravel pits are not covered by Act.

77: 103(a)
COURT JURISDICTION - Warrantless Inspection - Exhaustion of Administrative Remedies - Constitutional Adjudication, 201.08 201.12 22.0[F]

141
B B & W COAL COMPANY, INC.
77-48-P
October 25, 1979
RC
10/79 p1479*

(Old Docket Number IBMA No. 78-6) (Reference Docket Number 77 88-P)

Civil penalty for violation of general firefighting equipment requirement under 30 CFR §75.1100 was dismissed since cited condition was violation of 30 CFR §75.1100-2(e)(2), which is detailed requirement under 30 CFR §75.1100, and there was no showing on record that operator was aware of specific violation charged against it.

Civil penalty for violation of methane test requirement under 30 CFR § 75.307 was dismissed since evidence only that mine foreman did not have methane detector requires impermissible chain of inferences in order to find that no methane tests took place.

30 CFR 75.1100 30 CFR 75.1100-2(e)(2)
FIRE PROTECTION - Firefighting Equipment - Failure to Cite Specific Standard - Notice to Operator, 75.1100 24.05
30 CFR 75.307
VENTILATION - Methane Test - Absence of Methane Detector - Impermissible Chain of Inferences, 75.0307 35.30

334
B B & W COAL COMPANY, INC.
PIKE 76-149-P
January 9, 1979
ALJ - Final
Unbound

30 CFR 75.1713-1
30 CFR 75.523
30 CFR 75.316
30 CFR 75.1100
30 CFR 75.512
30 CFR 75.200
30 CFR 75.516
30 CFR 75.326
30 CFR 75.521
30 CFR 75.400
30 CFR 75.1722

1204
B B & W COAL COMPANY, INC.
PIKE 77-48-P
January 18, 1979
RC - Denying Motion
Unbound*

(Reference IBMA No. 78-6)

Request of mine operator not represented by counsel that its notice of appeal to Interior Board of Mine Operations Appeals be accepted as its brief for Commission review is granted.

COMMISSION PROCEDURE - Failure to File Brief -- Notice of Appeal as Brief, 35.20

32
B B & W COAL COMPANY, INC.
PIKE 77-89-P
June 7, 1979
RC - Reverse & Remand
6/79 p467*

(Reference Old Docket Number IBMA No. 77-67)

Operator's mailing of summary of reasons for desiring hearing to judges' office and submission of letter to Solicitor of Labor refusing to accept Solicitor's proposed stipulation constituted adequate response to judge's pretrial order and warrants reversal of default order issued for failure to so respond.

43 CFR 4.544(b)
REVIEW COMMISSION PROCEDURE - Pretrial Order - Default, 35.16

1062
B B & W COAL COMPANY, INC.
PIKE 77-89-P
August 27, 1980
ALJ - Final
8/80 p2354

PA

236
B B & W COAL COMPANY, INC.
PIKE 78-36-P
June 22, 1978
ALJ - Final
Unbound

30 CFR 75.1605(k)
30 CFR 75.606
30 CFR 75.200
30 CFR 75.301-4
30 CFR 75.302
30 CFR 75.400
77: 110(i)

491
B B & W COAL COMPANY, INC.
PIKE 78-62-P
October 11, 1978
ALJ - Final
Unbound

PA

465
B B & W COAL COMPANY, INC.
PIKE 78-63-P
October 11, 1978
ALJ - Final
Unbound

77: 110(a)
30 CFR 75.200

901
B S K MINING COMPANY, INC.
BARB 79-19-P
April 29, 1980
ALJ - Final
4/80 p998*

Lack of evidence that employee was working in area where hazardous conditions are present bars finding of violation of 30 CFR §77.1700 even if employee was working alone in area where he could not be seen or heard by others as regulation provides that no employee shall be allowed to work alone in area only where hazardous conditions exist.

Lack of reliable and substantial evidence of actual equipment defect affecting safety and resulting in accident justifies dismissal of citation for violation of 30 CFR §77.404 which requires that machinery in unsafe condition be removed from service immediately.

30 CFR 77.1700
COMMUNICATIONS - Employee Working Alone in Hazardous Area - Evidence, 77.1700
30 CFR 77.404
MECHANICAL EQUIPMENT - Operation and Maintenance - Unsafe Machinery Removed from Service - Evidence, 77.0404
201.30

886
B V HEDRICK GRAVEL & SAND COMPANY
SE 79-88-M
May 29, 1980
ALJ - Final
5/80 p1169*

Unguarded light bulbs which are six feet four inches off floor present possible burn or shock hazard to tall people who might run into them or to people who might carry something on their shoulder and hit light, so that condition constitutes violation of 30 CFR §56.12-34, which provides that lights which by their location present shock or burn hazard shall be guarded.

30 CFR 56.12-34
ELECTRICAL HAZARDS - Low Hanging Lights - Guarding, 56.12

994
BAKER COAL COMPANY
WEVA 80-284
September 16, 1980
ALJ - Final
9/80 p2626*

Operator violates Section 103(a) of Federal Mine Safety and Health Act of 1977 when it denies Mine Safety and Health Administration inspectors entry into its mine to conduct spot inspection; violation constitutes gross negligence because operator physically assaulted inspector, and violation is of serious gravity because it threatens to undermine integrity of mine safety enforcement; accordingly, substantial penalty of $8,000 is warranted.

77: 103(a)
INSPECTIONS-Operator's Refusal Allow Inspect Enter Mine-Physical Assult on Inspect-Gross Negligence-Serious Gravity, 22.01 26.30 26.50

139
BECKLEY COAL MINING COMPANY
HOPE 77-92-P
November 15, 1979
RC
11/79 p1794*

(Old Docket Number IBMA No. 77-52)

Inspector's methane examination of mine does not satisfy 30 CFR §75.307-1 under 1969 Act since statute imposes duty on operator, not inspector, to perform methane examination.

Operator violated 30 CFR §75.307-1 since foreman's methane examination of mine, although made before roof bolter entered crosscut, was not made "immediatley prior" to movement of roof bolter, as required by standard.

Notice of violation adequately describes violation of methane examination requirement in 30 CFR §75.307 when notice contains standard allegedly violated along with written description of condition leading to its issuance.

30 CFR 75.307-1
VENTILATION - Inspector's Methane Examination - Operator's Duty to Comply, 75.0307
30 CFR 75.307-1
VENTILATION - Foreman's Methane Examination - Roof Bolter in Mine - "Immediately Prior", 75.0307
30 CFR 75.307
VENTILATION - Methane Examination - Notice of Violation - Description of Condition, 75.0307 24.05

449
BECKLEY COAL MINING COMPANY
HOPE 79-10
November 13, 1978
ALJ - Final
Unbound

77: 105(d)

313
BECKLEY COAL MINING COMPANY
HOPE 79-35
November 27, 1978
ALJ - Final
Unbound

77: 105(d)

746
BERNITSKY BROTHERS COAL COMPANY
79-1453
March 19, 1980
3rd Cir Court/Appealed
N/A*

(Reference U.S. Supreme Court Number 80-40)

Action for damages brought by mine operator under Federal Tort Claims Act alleging that MESA inspector's issuance of withdrawal order pursuant to §104(b) of Federal Coal Mine Health and Safety Act of 1969 caused mine collapse is dismissed because inspector's decisions regarding extensions of abatement time and withdrawal orders fall within scope of discretionary function exception to Federal Tort Claims Act.

69: 104(b)
FEDERAL TORT CLAIMS ACT - Damages from Mine Collapse - Withdrawal Order - Discretionary Function Exception, 13.01

1199
BERNITSKY BROTHERS COAL COMPANY
80-40
October 6, 1980
US SUPREME COURT-Deny Petition
N/A*

Court denied operator's petition for writ of centiorari.

617
BETH ANN COAL CORPORATION
NORT 79-18-P
September 25, 1979
ALJ - Final
9/79 p1403

PA

985
BETHLEHEM MINES CORPORATION
PENN 80-52-R
September 10, 1980
ALJ - Final
9/80 p2564*

Operator cannot escape finding of unwarrantable failure under Section 104(d)(1) of Act by establishing that section foreman, in whose presence violation occurred, did not know that violative condition constituted violation of law; operators are chargeable with knowledge of law and test for unwarrantability includes conditions operator knew or should have known existed.

Violation of 30 CFR 75.1726(a) is caused by operator's unwarrantable failure to comply under Section 104(d)(1) of Act where section foreman should have known that working on raised portion of mobile equipment which was not blocked securely in place was violation of standard, section foreman was present when violation occurred and failed to exercise reasonable care and due diligence to abate violation, and violation could significantly and substantially contribute to cause and effect of mine safety and health hazard.

77: 104(d)(1)
CITATIONS - Unwarrantable Failure to Comply - Section 104(d)(1) - Knowledge of Violation Condition, 24.20 37.05
30 CFR 75.1726(a) 77: 104(d)(1)
CITATIONS - Unwarrantable Failure to Comply - Section 104(d)(1) - Foreman's Failure to Exercise Reasonable Care, 24.20 75.1726

1064
BETHLEHEM MINES CORPORATION
PENN 80-105-M
August 27, 1980
ALJ - Final
8/80 p2367

30 CFR 56.17-1

203
BETHLEHEM MINES CORPORATION
PITT 77-50-P
August 31, 1979
ALJ - Final
8/79 p1280*

Citation for violation of 30 CFR §75.1725(a) for failure to maintain shuttle car in safe operating condition is vacated for lack of showing that mine operator knew or should have known of defect which caused accident.

Delay of 35 days in issuance of citation after accident investigation is unreasonable and warrants vacation of citation.

30 CFR 75.1725(a)
MECHANICAL EQUIPMENT - Shuttle Car - Safe Operating Condition - Knowledge of Violation - Underground Coal Mines, 75.1725 37.05
30 CFR 75.304
CITATIONS - Delay in Issuance, 24.03

181
BETHLEHEM MINES CORPORATION
PITT 78-412-P
November 6, 1979
ALJ - Final
11/79 p1852*

Operator violated 30 CFR §75.400 despite its claim that friction between section crews resulted in refusal of day shift to clean up accumulation of loose coal because it is responsibiltiy of operator to prevent accumulations.

Operator violated 30 CFR §75.400 despite its claim that accumulation of loose coal was caused by unusual rock conditions because evidence showed that operator allowed sizable accumulations to build up over period of time and not to be cleaned up from one shift to another.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Failure to Clean Up - Friction between Crews, 75.0400 37.10
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Failure to Clean Up - Unusual Rock Condition, 75.0400 37.10

936
BETHLEHEM MINES CORPORATION
PITT 79-91-P
May 30, 1980
ALJ - Final
6/80 p1265*

Operator violates provision of 30 CFR §75.200 when less than minimum number of temporary roof supports required by its roof-control plan are installed, but operator is not responsible for death of miner who disregarded orders of foreman and proceeded to work in area before it was properly supported.

30 CFR 75.200
ROOF SUPPORT - Violation of Roof-Control Plan - Occurence of Accident - Employee's Negligence, 75.0200

230
BETSY-ANN COAL COMPANY
NORT 76-252-P
June 13, 1978
ALJ - Final
Unbound

43 CFR 4.544
30 CFR 70.100(b)
30 CFR 70.220(a)(3)
30 CFR 70.230(b)
30 CFR 70.246

281
BIB "B" MINING COMPANY
PITT 78-389-P
September 21, 1978
ALJ - Final
Unbound

30 CFR 77.4
PA

1054
BIG TEN CORPORATION
VA 80-30
August 15, 1980
ALJ - Final
8/80 p2266

Citation for violation of 30 CFR 75.1722 which requires adequate guarding of rollers of underground belt drive must be dismissed when operator's evidence establishes that rollers were adequately guarded by strips of belting and by fence which prevented anyone from gaining access to machinery without removing it.

Operator violates 30 CFR 75.400 when accumulations of coal dust are found in working area of mine and accumulation is so excessive that it could not be considered spillage which accumulated during normal mining cycle.

Operator must have operable water deluge system for underground belt drive, as required by 30 CFR 75.1101-3, but citation for violation of standard must be dismissed when there is conflicting evidence as to whether cited water pipe was severed or just cracked, and there was convincing evidence that system, despite crack, was operating sufficiently.

Operator does not violate 30 CFR 77.205(e) by failing to provide toeboards on elevated walkway which has handrails and which has been used for five years without an accident, because regulation requires that toeboards be provided only "where necessary," and walkway was sufficiently safe without toeboards.

Violation of 30 CFR 75.301-1 is established when inspector uses anemometer to determine that there is insufficient volume and velocity of air in entry of mine, and operator's argument that condition was created immediately before reading when brattice curtain was knocked down is not defense to violation, because it is likely that more than one problem contributed to loss of velocity and volume.

Provisions of 30 CFR 75.403 require that operator maintain incombustible content of rock dust of at least 65 percent at all times, and operator violates standard when inspector finds samples of rock dust less than 65 percent, even though operator was in process of distributing rock dust in accordance with regular plan at time of inspection, because operator should not be allowed to have inadequate amounts of rock dust in its facility for any period of time.

30 CFR 75.1722
MECHANICAL EQUIPMENT - Underground Belt Drive - Guards on Rollers, 75.1722
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation of Coal Dust, 75.0400
30 CFR 75.1101-3
FIRE PROTECTION - Water Sprays and Sprinklers - Underground Belt Drive - Conflicting Evidence, 75.1101 35.30
30 CFR 77.205(e)
TRAVELWAYS - Elevated Walkways - Toeboards Provided Where Necessary, 77.0205
30 CFR 75.301-1
VENTILATION - Air Quantity, Quality, and Velocity - Total Loss of Volume and Velocity, 75.0301
30 CFR 75.403
ROCK DUSTING - Incombustible Content of Rock Dust - Minimum Percentage Required at All Times, 75.0403
30 CFR 75.403

556
BILL W STODDARD, ET AL, MINING COMPANY
DENV 78-527-P
June 26, 1979
ALJ - Final
6/79 p629

PA

53
BILL'S COAL COMPANY
DENV 78-359-P
April 5, 1979
ALJ - Final
4/79 p167*

(Reference Docket Number 78-437-P, 78-438-P, 78-439-P and 78-493-P)

Presence of certain equipment, items, and coal accumulations on walkways providing only access to two conveyor belts creates stumbling hazards in violation of 30 CFR §77.205(b).

Failure to record, in examination record book, stumbling hazards, substantial coal accumulations, escapeway blockage, and instances of unguarded machinery constitutes violation of 30 CFR §77.1713(c).

Removal of cover plate from junction box located near drive pulley of belt to allow replacement of drive motor on conveyor and opration of belt for testing purposes only while junction box was unguarded does not constitute violation of 30 CFR §77.512, which permits removal of cover plates for testing or repairs.

Defense to charge of failure to provide guards for equipment in violation of 30 CFR §77.400(a) and (c), that equipment was being tested, is rejected since no connection was established between absence of guards and operation of the equipment for testing.

Failure to guard belt drive pulley of horizontal conveyor and tail pulley of belt conveyor does not establish violations of 30 CFR §77.400(a) and (c), since guards were removed for purposes of repair, some unguarded equipment had been operated for testing purposes only while in its unguarded condition, and other unguarded equipment was inoperative.

30 CFR 77.205(b)
TRAVELWAYS - Stumbling Hazards - Surface Coal Mines, 77.0205
30 CFR 77.1713(c)
SELF-INSPECTION - Examination Record Book - Surface Coal Mines, 77.1713
30 CFR 77.512
ELECTRICAL EQUIPMENT - Inspection and Cover Plates - Junction box - Surface Coal Mines, 77.0512
30 CFR 77.400(a) 30 CFR 77.400(c)
MECHANICAL EQUIPMENT - Testing - Absence of Guards - Surface Coal Mines, 77.0400 37.10
30 CFR 77.400(a) 30 CFR 77.400(c)
MECHANCIAL EQUIPMENT - Guarding - Operation During Testing, 77.0400

1172
BILLY MOON TRUCKING COMPANY, INC.
SE 79-86
October 17, 1980
ALJ - Final
10/80 p3016

PA

255
BISHOP COAL COMPANY
HOPE 78-111-P
July 31, 1978
ALJ - Final
Unbound

PS

844
BISHOP COAL COMPANY
HOPE 79-241
May 30, 1980
ALJ - Final
6/80 p1296*

Operator's notification of miners' representative of impending inspection of mine does not satisfy provisions of §103(f) of Federal Mine Safety and Health Act of 1977 if representative is committed to accompanying another inspector, because notification alone does not meet requirements of Act as representative must be given opportunity to accompany inspector on inspection.

Inspector's arrival at mine after miners had gone underground does not provide valid excuse for operator's failure to afford miners' representaative opportunity to accompany inspector, as there is no requirement in §103(a) of Federal Mine Safety and Health Act of 1977 that inspector appear at mine at any specific time.

77: 103(f)
INSPECTIONS - Right of Miners' Representative to Accompany - Notification - Opportunity to Accompany, 22.20
77: 103(f)
INSPECTIONS - Late Arrival of Inspector - Right of Representative to Accompany, 22.20
77: 104(b)

703
BISHOP COAL COMPANY
WEVA 79-238-D
February 13, 1980
ALJ - Final
2/80 p440

29 CFR 2700.30
77: 105(c)(3)

1117
BISHOP COAL COMPANY
WEVA 80-41
July 14, 1980
ALJ - Final
7/80 p1823*

Small piles of rocks and debris and small metal pipes which are installed by operator as means of preventing overtravel and overturning at dumping locations and along elevated roadways do not satisfy requirements of 30 CFR §§77.1605(k) and (l) which require that adequate berms or guards be installed at these locations.

30 CFR 77.1605(k) 30 CFR 77.1605(l)
HAULAGE - Dumping Locations and Elevated Roadways - Berms Required, 77.1605
30 CFR 77.1605(l)

1042
BISHOP COAL COMPANY
WEVA 80-429-D
August 7, 1980
ALJ - Review Denied/Appealed
8/80 p2160*

(Reference HOPE CD 80-41 and D.C. Cir. Number 80-2267)

According to existing precedent of Federal Mine Safety and Health Review Commission, miners' representatives are not entitled to be compensated for time spent on walkaround during course of spot inspection, and fact that rulings have been appealed to courts is no basis for staying proceedings; operator is entitled to summary decision as matter of law when miners file complaint of discrimination for operator's refusal to pay representatives for time spent on spot inspections.

77: 103(f) 77: 105(c)
INSPECTIONS - Walkaround Rights - Pay of Miners' Representatives - Spot Inspections, 22.20

324
BLACK DIAMOND COAL COMPANY, INC.
HOPE 78-117-P
December 14, 1978
ALJ - Final
Unbound

30 CFR 75.513
30 CFR 75.514
30 CFR 75.517
30 CFR 75.603
30 CFR 75.701
30 CFR 75.516
30 CFR 75.518
30 CFR 75.523
30 CFR 75.601-3
30 CFR 75.703
30 CFR 75.1100-2(b)
30 CFR 75.1101-23

325
BLACK DIAMOND COAL COMPANY, INC.
HOPE 78-117-P
December 14, 1978
ALJ - Final
Unbound

30 CFR 75.1100
30 CFR 75.1103.1
30 CFR 75.1107
29 CFR 2700.26(c) (I)
77: 110(i)
30 CFR 70.246
30 CFR 70.250
30 CFR 70.508
30 CFR 75.200
30 CFR 75.301
30 CFR 75.303
30 CFR 75.306

326
BLACK DIAMOND COAL COMPANY, INC.
HOPE 78-117-P
December 14, 1978
ALJ - Final
Unbound

30 CFR 75.316
30 CFR 75.323
30 CFR 75.400
30 CFR 75.402
30 CFR 75.503
30 CFR 75.507-1
30 CFR 75.512
30 CFR 75.1710
30 CFR 75.1722(a)
30 CFR 75.1801
30 CFR 75.1802
30 CFR 75.1803

327
BLACK DIAMOND COAL COMPANY, INC.
HOPE 78-117-P
December 14, 1978
ALJ - Final
Unbound

30 CFR 70.506
30 CFR 70.509

682
BLACKJACK COAL COMPANY
BARB 79-157-P
January 28, 1980
ALJ - Final
1/80 p128

77: 110(i)

1262
BLACKJACK COAL COMPANY, INC.
BARB 78-705-P
November 20, 1980
ALJ - Final
11/80 p3353

77: 110(i)

622
BLUE RIDGE COAL CORPORATION
PIKE 79-27-P
September 26, 1979
ALJ - Final
9/79 p1439

541
BLUE ROCK INDUSTRIES
WILK 79-11-PM
April 23, 1979
ALJ - Final
4/79 p254

PS

1020
BORSBERRY CONSTRUCTION COMPANY, INC.
CENT 79-174-M
July 2, 1980
ALJ - Final
7/80 p1724

30 CFR 56.6-44

570
BOYLE AIRE COAL COMPANY
BARB 79-76-P
July 25, 1979
ALJ - Final
7/79 p934

PS

623
BRADLEY COUNTY HIGHWAY DEPARTMENT
BARB 79-94-PM
September 26, 1979
ALJ - Final
9/79 p1443

29 CFR 2700.63(a)

1133
BRADY'S BEND CORPORATION
PENN 79-70-M
October 7, 1980
RC - Denying Request
10/80 p2747

29 CFR 2700.65(c)

235
BRAZTAH CORPORATION
DENV 78-5-P
June 22, 1978
ALJ - Final
Unbound

30 CFR 75.501
30 CFR 75.504
30 CFR 75.500
30 CFR 75.1105
30 CFR 75.200
30 CFR 75.703
30 CFR 75.503

686
BRUBAKER-MANN, INC.
WEST 79-193-M
January 29, 1980
ALJ - Final
1/80 p227*

Operator's failure to provide berms on elevated access road to diesel pump that had 25 foot drop off within six feet of pump constituted violation of 30 CFR §56.9-22 even though company abated citation and no accidents occurred on road.

Citation issued for violation of 30 CFR §56.11-2, which requires handrails for elevated walkways, is vacated since operator, who is more familiar than inspector with company's work activities, testified that no workers used walkway.

Citation issued for violation of 30 CFR §56.15-5, which requires that safety belts be worn by miners when in danger of falling, is vacated since company showed that crusher operator could not fall through opening in grizzlies.

Imposition of "instant fines" under 1977 Act is proper since under section 110(i) of Act, Federal Mine Safety and Health Review Commission has authority to assess all civil penalties and instant fines are merely proposals by MSHA.

California Occupational Safety and Health Act does not pre-empt Federal Mine Safety and Health Act of 1977, since federal act, by applying to "coal or other mine(s)," relates more specifically to miners and is applicable over general OSHA statutes.

30 CFR 56.9-22
HAULAGE - Berms - Elevated Access Road - Abatement of Citation, 56.09
30 CFR 56.11-2
TRAVELWAYS - Handrails - Elevated Hand Walkway - Operator's Testimony, 56.11
30 CFR 56.15-5
PERSONAL PROTECTION - Safety Belts - Crusher Operator - Opening in Grizzlies, 56.15
77: 110(i)
PENALTIES - "Instant Fines" - Review Commision's Authority - Proposals by MSHA, 26.03
COVERAGE OF ACT - Applicability - CAL-OSHA - Specificity, 5.101 5.105

702
BUCKEYE COAL MINING COMPANY, INC.
LAKE 79-109
February 13, 1980
ALJ - Final
2/80 p438

PS

164
BUFFALO MINING COMPANY
HOPE 78-333-P
October 30, 1979
ALJ - Final
10/79 p1740*

Mine owner is liable under 1969 Act for violations committed by independent subcontractor engaged by owner to install coal stacker on mine property.

Fact that wire rope was safe is not material to question of whether operator violated 30 CFR §77.1402-1, which requires that ANSI specifications for wire ropes be used as guide in selection and use of wire rope to hoist men; operator's failure to use ANSI specifications as guide constituted violation of standard.

Citation for violation of 30 CFR §77.1403(a) is vacated since there was no evidence that wire rope that broke causing accident contained numerous broken wires prior to accident as alleged and Secretary's experts believed that rope failure was caused by excessive tension, which could have occurred before accident.

In computing amount of penalty, gross negligence of independent contractor can be imputed to mine owner since legislative history of 1969 Act indicates that act is remedial in nature and mine ower should be encouraged to ensure protection of employees of independent contractors.

69: 3(d) 69: 104(a)
INDEPENDENT CONTRACTORS - Mine Owner's Liability under 1969 Act, 37.20
30 CFR 77.1402-1
MAN HOISTING - Wire Rope - Safety of Rope - ANSI Specifications - Materiality, 77.1402 35.30
30 CFR 77.1403(a)
MAN HOISTING - Broken Wire Rope - Prior to Accident - Excessive Tension on Rope, 77.1403
69: 109(a)(1)
PENALTIES-Computation of Penalty-Negligence of Independent Contractor Imputed to Mine Owner-Legislative History, 26.30 5.08 5.108 37.20
30 CFR 77.404(a)

385
BURGESS MINING & CONSTRUCTION CORPORATION
BARB 78-91-P
October 5, 1978
ALJ - Final
Unbound

30 CFR 77.1605(b)

970
BURGESS MINING & CONSTRUCTION CORPORATION
BARB 78-541
October 13, 1978
ALJ - Review Denied
Unbound

29 CFR 2700.18 (I)
29 CFR 2700.21 (I)

969
BURGESS MINING & CONSTRUCTION CORPORATION
BARB 78-541
December 8, 1978
ALJ - Review Denied
Unbound

77: 105(d)
29 CFR 2700.18 (I)
29 CFR 2700.21 (i)

959
BURGESS MINING & CONSTRUCTION CORPORATION
BARB 78-541
April 12, 1979
RC - Denying Review
Unbound

77: 113(d)(2)(A)(i)

109
BURGESS MINING & CONSTRUCTION CORPORATION
BARB 79-255-P
August 10, 1979
ALJ - Final
8/79 p1029*

Inspector correctly issued citation for violation of 30 CFR §77: 1605(k) in 1978 since berms were needed on haul road leading to and from mine to alleviate slight hazard which remained despite elimination of hazardous condition on most of road following issuance of citation in 1972.

30 CFR 77.1605(k)
HAULAGE - Inadequately Bermed Road - Hazardous Condition - Surface Coal Mines, 77.1605

980
BURGESS MINING & CONSTRUCTION CORPORATION
SE 79-9
September 5, 1980
ALJ - Final
9/80 p2538*

Failure to provide mechanic's truck in pit area with automatic warning device to give audible alarm when truck is put in reverse constitutes violation of 30 CFR 77.410, because standard requires that mobile equipment have automatic backup alarms, standard does not distinguish between various types of trucks, and standard does not specifically incorporate industry interpretation of various terms; accordingly, operator's contentions, that 30 CFR 77.410 is so ambiguous that it should be invalidated and that customary usage of various terms in mining industry should be basis for not applying standards, are rejected.

Judge is not bound by March 9, 1978 Mine Safety and Health Administration Surface Manual which provides that backup warning devices need not be provided for moving vehicles where vehicle operator's view directly behind vehicle is not obstructed; if Secretary wishes to circumscribe backup alarm requirement in 30 CFR 77.410, he should follow rulemaking process rather than place change in inspector's manual.

30 CFR 77.410
MECHANICAL EQUIPMENT - Automatic Warning Device - Trucks, 77.0410
30 CFR 77.410
STANDARDS - Applicability - Inspector's Manual, 40.30 77.0410

979
BURGESS MINING & CONSTRUCTION CORPORATION
SE 79-10
September 5, 1980
ALJ - Final
9/80 p2534*

Verb "to store" means "to put aside or accumulate, for use when needed;" accordingly, 30 CFR 77.1301(a), which requires that explosives be stored in magazines, is inapplicable to situation in which caps, primers, and ammonium nitrate fuel oil bags are lying in cargo space of flatbed truck in drilling and hole loading area of coal pit since these articles were not put aside but had been taken from storage magazine, and had been brought to pit area where they were just about to be used.

Section 1301 of subpart N of regulations deals with explosives when they are not going to be used immediately, Section 1302 deals with transpotation of explosives, and Section 1303 sets forth requirements for handling of explosives as they are about to be used; accordingly, application of 30 CFR 77.1301(a) to case where caps, primers, and ammonium nitrate fuel oil bags are lying in cargo space of flatbed truck in drilling and hole loading area of coal pit would ignore entire scheme and sequence of subpart N.

Granting of Secretary's motion to amend petition for civil penalty to substitute 30 CFR 77.1303(f) for 77.1301(a) would deny operator fundamental due process since at hearing operator only defended itself against charge of violating 77.1301(a) and bench decision did not and could not decide that there was violation of 77.1303(f); if citation were amended by Secretary and new petition filed, then operator would be entitled to all of Secretary's prehearing procedures with respect to any alleged violation.

30 CFR 77.1301(a)
EXPLOSIVES - Store - Lying in Pit Area, 77.1301
30 CFR 77.1301(a)
EXPLOSIVES - Scheme of Standards - Explosives Not to be Used Immeaditely, 77.1301
30 CFR 77.1303(f) 30 CFR 77.1301(a)
EXPLOSIVES - Petition for Assessment of Civil Penalty - Amendment, 35.101 77.1301

657
BURGESS MINING & CONSTRUCTION CORPORATION
SE 79-42
December 10, 1979
ALJ - Review Granted
12/79 p2038

77: 104(a)
30 CFR 77.1605(k)

749
BURGESS MINING & CONSTRUCTION CORPORATION
SE 79-42-R
March 18, 1980
ALJ - Review Granted
Not Printed*

Secretary of Labor's filing of brief by mail 25 days after order granting his petition for discretionary review rather than within 20 days as required by 29 CFR §2700.72 is not grounds for vacation of direction for review since Secretary is entitled, pursuant to 29 CFR §2700.8(b), to five additional days when service is by mail.

29 CFR 2700.72 29 CFR 2700.8(b)
REVIEW COMM PROCEDURE- Brief after Order of Review- Timeliness- 20-day Requirement- Five-day Extension, 35.24

827
BURGESS MINING & CONSTRUCTION CORPORATION
SE 79-42-R
March 18, 1980
RC - Denying Motion
4/80 p776

29 CFR 2700.72
29 CFR 2700.8(b)

1290
BURGESS MINING & CONSTRUCTION CORPORATION
SE 80-47
December 5, 1980
ALJ - Final
12/80 p3554

30 CFR 77.1606(c)

855
C & K COAL COMPANY
PENN 79-60
June 12, 1980
ALJ - Review Granted
6/80 p1410

PA

1036
C & K COAL COMPANY
PENN 79-60
August 4, 1980
RC - Remanding
8/80 p2047

1060
C & O MATERIALS CORPORATION
CENT 79-398-M
August 26, 1980
ALJ - Final
8/80 p2339*

(Reference CENT 79-399-M)

Operator's failure to provide inspection and cover plates on junction box on motor of roll crusher does not violate 30 CFR 56.12-32 which requires such protection, when evidence establishes that equipment had not been used for some time because of electrical defect and therefore presented no electrical hazard.

Operator violates provisions of 30 CFR 56.15-4 when safety glasses are not worn by employees who are using sledge hammers to break oversized rocks in primary feeder, even though operator provided glasses to employees, because glasses issued afford no protection unless they are worn.

Citation for violation of 30 CFR 56.11-1 which requires operator to provide safe means of access to work platforms must be vacated when cited platform is located near shaker screen and conveyor belt which carried material up to screen was equipped with handrails so that employee could safely walk up incline directly to shaker screen and platform.

30 CFR 56.12-32
ELECTRICAL HAZARDS - Electrical Equipment - Inspection and Cover Plates Required - Inoperable Equipment, 56.12
30 CFR 56.15-4
PERSONAL PROTECTION - Safety Glasses, 56.15
30 CFR 56.11-1
TRAVELWAYS - Safe Means of Access to Work Platform - Handrails Provided, 56.11

485
C C C POMPEY COAL COMPANY, INC.
PIKE 78-342-P
December 15, 1978
ALJ - Final
Unbound

PS

684
C C C POMPEY COAL COMPANY, INC.
PIKE 79-125-P
January 28, 1980
ALJ - Review Granted
1/80 p163

(Reference Docket Number PIKE 79-19-P)

30 CFR 75.1710
30 CFR 75.1704
30 CFR 75.351
30 CFR 75.316
30 CFR 75.200
30 CFR 75.603
30 CFR 75.604

896
C C C POMPEY COAL COMPANY, INC.
PIKE 79-125-P
June 12, 1980
RC
6/80 p1195*

(Reference Docket Number PIKE 79-19-P)

Judge's ruling, that Secretary failed to establish violation of 30 CFR 75.400 because inspector conceded that he did not know how long accumulation of combustible materials had been on scoop and thus could not establish that operator failed to clean it up within reasonable time, was erroneous because commission decision in Old Ben Coal Company (1 MSHC 2241) held that standard is violated upon showing that accumulation exists regardless of cleanup effort.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation on Scoop - Cleanup Efforts as Element of Violation, 75.0400 35.22

1218
C C C POMPEY COAL COMPANY, INC.
PIKE 79-125-P
September 3, 1980
ALJ - Final on Remand
9/80 p2512*

(Reference Docket Number PIKE 79-19-P)

Operator violates 30 CFR 75.400 where oil and float coal dust are allowed to accumulate to depth of from one-eighth inch to one inch on and around electrical components of S and S Scoop, because Commission held in Old Ben Coal Company, 1 MSHC 2241 (1979) that 30 CFR 75.400 was designed to prevent accumulations rather than to require that accumulations be cleaned up within reasonable period of time.

Violation of 30 CFR 75.400 is serious and associated with high degree of negligence where oil and float coal dust are allowed to accumulate to depth of from one-eighth inch to one inch on and around electrical components of S and S Scoop since accumulations are caked in form which show that they existed more than two days prior to writing of unwarrantable failure order under Section 104(d) of 1977 Act.

It is improper to find that operator failed to demonstrate good faith effort to achieve compliance with unwarrantable failure order based on violation of 30 CFR 75.400, where oil and float coal dust accumulated to depth of from one-eighth inch to one inch on and around electrical components of S and S Scoop, solely because several days elapsed between time order was written and time it was terminated.

Evidence showing that operator violated 30 CFR 75.400 twice in 1976 and eight times in 1977 demonstrates very adverse trend in number of violations of that section and justifies increasing $300 penalty for 1978 violation of 30 CFR 75.400 to $400.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Oil and Float Coal Dust, 75.0400
30 CFR 75.400 77: 104(d)
PENALTIES-Negligence Operator-Gravity of Violation-Accumulation of Oil and Float Coal Dust, 26.30 75.0400 26.50
30 CFR 75.400
PENALTIES - Good Faith - Compliance - Accumulations, 26.60 75.0400
30 CFR 75.400
PENALTIES - History of Violations - Accumulations, 26.10 75.0400

1232
C F & I STEEL CORPORATION
DENV 76-46
December 2, 1980
RC
12/80 p3459*

(Reference IBMA No. 77-10)

Prerequisite to issuance of withdrawal under Section 104(c)(2) of 1969 Act was absence of intervening "clean" inspection of entire mine and it was Mining Enforcement and Safety Administration's obligation to present prima facie case of such absence; secretary's argument, that only complete regular quarterly inspection can constitute "clean" inspection of entire mine, is rejected.

69: 104(c)(2)
WITHDRAWAL ORDERS - Section 104(c)(2) - 1969 Act - Intervening "Clean" Inspection, 24.25

337
C F & I STEEL CORPORATION
DENV 77-53
January 16, 1979
ALJ - Final
Unbound

69: 104(a)

795
C F & I STEEL CORPORATION
DENV 77-68
February 8, 1979
ALJ - Final
Unbound*

Muddy walkway located along moving conveyor belt where miner was working did not constitute imminent danger since if miner fell under belt he could not contact any part of return belt except smooth underside which moves as slowly as stopped belt and it is highly improbable that miner could slip uphill into belt.

77: 107(a)
IMMINENT DANGER - Travelways - Surface Coal Mines, 24.50

28
C F & I STEEL CORPORATION
DENV 77-79-P
March 15, 1979
ALJ - Review Denied
3/79 p107*

Presence of tubing intake end in crosscut face and 30 feet from deepest penetration of entry that was to be driven constitutes violation of 30 CFR 75.316, where ventilation plan requires that line curtains or tubing be maintained to within 10 feet from the area of deepest penetration to which any portion of the face has been advanced, and "tubing" refers to intake end of tubing.

30 CFR 75.316
VENTILATION - Ventilation Plan - Line Curtains and Tubing, 75.0316

417
C F & I STEEL CORPORATION
DENV 77-79-P
March 29, 1979
ALJ - Stay Order
3/79 P175

PA

463
C F & I STEEL CORPORATION
DENV 78-44-P
September 12, 1978
ALJ - Final
Unbound

30 CFR 75.400
69: 109(a)

517
C F & I STEEL CORPORATION
DENV 78-362-P
April 18, 1979
ALJ - Final
4/79 p248

296
C F & I STEEL CORPORATION
DENV 78-416
November 1, 1978
ALJ - Final
Unbound

77: 105(a)
77: 105(d)

84
C F & I STEEL CORPORATION
DENV 78-417
June 27, 1979
ALJ - Final
6/79 p672*

Mine safety inspector has inherent authority to order reasonable actions in furtherance of inspection which are not enforcement actions under Mine Safety Act; accordingly, inspector's request to stop belt, made before he decided on enforcement action, does not change point of issuance of subsequent withdrawal order.

Imminent danger withdrawal order alleging that coal, coal dust, and float coal dust were present at particular location gives operator adequate notice that presence of float coal dust away from such location may be at issue, in view of tendency of float coal dust to travel with direction of ventilation.

Evidence that coal and coal dust had accumulated around belt, that belt's rollers were running hot, and that float coal dust was present, is sufficient to support issuance of imminent danger withdrawal order.

Admitted knowledge on part of mine officials of accumulations of coal and coal dust of 2 1/2 to 3 hours prior to inspector's issuance of withdrawal order requires finding of violation of 30 CFR §75.400 as construed in Old Ben Coal Company, 8(IBMA 98 (1977)).

77: 105(a)
INSPECTION - Inspector's Conduct - Orders in Furtherance of Inspection, 35.10

77: 107(c)
WITHDRAWAL ORDER - Adequacy of Notice of Imminent Danger, 24.05
77: 107(a)
IMMINENT DANGER - Accumulation of Coal and Coal Dust - Float Coal Dust - Belt Running Hot, 24.50
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Delay in Cleanup, 75.0400 37.05

23
C F & I STEEL CORPORATION
DENV 78-498-P
February 22, 1979
ALJ - Final
Unbound*

Once crosscut is holed through so as to allow passage of air, operator is required, under 30 CFR §75.301, to install adequate ventilation devices to insure that requisite volume of air reaches places where men are working.

30 CFR 75.301
VENTILATION - Last Open Crosscut - Underground Coal Mine, 75.0301

1108
C F & I STEEL CORPORATION
WEST 80-85-D
July 1, 1980
ALJ - Review Granted/Vacated
7/80 p1710*

Complaint of discrimination based on allegation that operator suspended miner because he made protected safety complaints must be dismissed when evidence establishes that one suspension was issued because of alleged insubordination, that another suspension was issued because miner allegedly helped to instigate strike, and that safety complaints which had been made were too remote to be considered moving force behind suspensions.

77: 105(c)(2)
DISCRIMINATION - Suspension-Insubordination-Instigating Strike-Connection with Safety Complaints, 30.053

1072
C J RUST CONSTRUCTION COMPANY
KENT 79-302
August 27, 1980
ALJ - Final
8/80 p2445

PS

637
CALICO ROCK MILLING, INC.
DENV 79-219-PM
October 17, 1979
ALJ - Final
10/79 p1621

30 CFR 56.9-87
30 CFR 56.14-1
30 CFR 56.14-6
30 CFR 56.9-7
30 CFR 50.20

837
CALL & RAMSEY COAL COMPANY, INC.
KENT 79-281
May 14, 1980
ALJ - Final
6/80 p1237

30 CFR 77.807-2

1109
CALL & RAMSEY COAL COMPANY, INC.
KENT 80-66
August 14, 1980
ALJ - Final
Unbound*

Operator's failure to make track safe, in violation of 30 CFR 77.1605(m), is not associated with high degree of negligence where operator's contract with railway company requires railway to maintain track and reserves to railway "absolute right" of control over use of tracks and roadbed and where accident on track is due to railway's failure to maintain track in safe condition; accordingly, settlement agreement reducing proposed penalty from $1,200 to $900 is approved in light of low degree of negligence and other factors.

30 CFR 77.1605(m)
SETTLEMENTS - Negligence - Contract Terms, 35.40 77.1605
77: 110(i)

1135
CAMBRIA COAL COMPANY
PITT 76-108-P
October 7, 1980
RC - Affirming
10/80 p2756*

(Reference IBMA No. 76-121)

Judge did not err in considering size of parent company in assessing penalty for wholly-owned subsidiary because consideration of size of subsidiary alone and review of record evidence in view of criteria of Section 109(a)(1) of 1969 Act support propriety of assessed penalties.

Judge's finding that operator is responsible for conditions on highwall which gave rise to violation of 30 CFR 77.1000, for failure to follow approved ground control plan, is upheld, even though operator argues that it did not create highwall.

69: 109(a)(1)
PENALTIES-Assessment Under Sec 109(a)(1) of 1969 Act-Size of Business-Consideration of Parent Company, 26.20
30 CFR 77.1000
GROUND CONTROL - Failure to Follow Approved Plan - Highwall Which Operator Did Not Create, 77.1000

67
CAMBRIDGE MINING CORPORATION
DENV 77-7-P
August 3, 1979
RC
8/79 p987*

(Reference Old Docket Number IBMA No. 77-50)

Although mine operator assigned its miners to other areas until loose ribs in roof of entry were properly supported, operator's failure to specifically withdraw miners from area or post danger signs supports finding of violation of 30 CFR §75.200.

30 CFR 75.200
ROOF SUPPORT - Loose Ribs - Access to Hazard - Underground Coal Mines, 75.0200 37.15

349
CANTERBURY COAL COMPANY
PITT 78-127
April 21, 1978
ALJ - Review Granted
Unbound

30 CFR 75.200
30 CFR 75.400

19
CANTERBURY COAL COMPANY
PITT 78-127
May 4, 1979
RC - Striking Material
5/79 p335*

(Reference Docket Numbers 78-128, 78-301-P and 78-302-P)

Motion of Commission judge to intervene in review of his decision by full Commission is denied as inappropriate and without basis in law.

Upon motion of Secretary of Labor and union, allegedly defamatory matter regarding conduct of counsel is stricken from Commission judge's motion to intervene in review preceedings, since to include such allegations deprives those accused of procedural safeguards of Interim Rule 5.

REVIEW COMMISSION PROCEDURE - Judges' Authority and Duties - Intervention on Review, 35.22 35.24
29 CFR 2700.5 (I)
REVIEW COMMISSION PROCEDURE - Allegedly Defamatory Matter - Motion to Strike, 35.12 35.90

947
CANTERBURY COAL COMPANY
PITT 78-127
September 21, 1979
RC - Vacate & Remand/Appealed
9/79 p1311

(Reference 3rd Cir. No 79-2500)

1320
CANTERBURY COAL COMPANY
PITT 78-127
September 29, 1980
US Appeals - D.C.
N/A*

(Reference D.C. Cir. Number 79-2500)

Canterbury's peitition for review of a FMSHRC remand order vacating a ruling favorable to Canterbury, on the grounds that the ALJ had denied the Secretary of Labor the right to a fair hearing because of the judge's intrusive questioning and "lack of proper judicial restraint", was dismissed as premature.

808
CAPITOL AGGREGATES, INC.
DENV 79-163-PM
April 14, 1980
ALJ - Review Granted
4/80 p869

(Reference: See also 8/80 p2378)

30 CFR 56.9-24
30 CFR 56.14-1
30 CFR 56.9-71
30 CFR 56.17-1

811
CAPITOL AGGREGATES, INC.
DENV 79-163-PM
April 22, 1980
ALJ - Stay Order
4/80 p948

29 CFR 2700.56(c)

894
CAPITOL AGGREGATES, INC.
DENV 79-163-PM
May 23, 1980
RC
5/80 p1040*

(Reference Docket Number DENV 79-240-PM)

Administrative law judge has no authority to stay effect of or to reconsider his decision since decision constitutes his "final disposition of proceedings" within meaning of Section 113(d)(1) of Federal Mine Safety and Health Act of 1977 and of Commission Rule 65(a), 29 CFR §2700.65(a)

Administrative law judge may, pursuant to Commission Rule 65(c), 29 CFR §2700.65(c), by letter placed in record, inform Federal Mine Safety and Health Review Commission that he erred in his decision or that case should be returned to him for other reasons and suggest that his decision be directed for review and case remanded to him.

77: 113(d)(1) 29 CFR 2700.65(a)
REVIEW COMMISSION PROCEDURE - Judge's Authority - Stay and Reconsideration of Decision, 35.22 35.24
29 CFR 2700.65(c)
REVIEW COMMISSION PROCEDURE - Judge's Authority - Error in Decision - Remand by Review Commission, 35.22 35.24

1065
CAPITOL AGGREGATES, INC.
DENV 79-163-PM
August 27, 1980
ALJ - On Remand/Rev Granted
8/80 p2373

634
CARBON FUEL COMPANY
HOPE 78-623-P
October 15, 1979
ALJ - Final
10/79 p1609

PS

1203
CARBON FUEL COMPANY
Hope 75-800
January 19, 1979
RC - On Remand
Unbound*

(Reference IBMA No. 76-24)

Decision of Interior Board of Mine Operations Appeals vacating notice of violation upon application for review by mine operator under Section 105(a) of 1969 Act is vacated and application for review is dismissed upon recommendation of parties and in view of subsequent closure of mine and termination of notice, notwithstanding decision of appeals court holding that Board was without jurisdiction to review such notice of violation and remanding case to Review Commission for further proceedings.

69: 105(a)
COMMISSION PROCEDURE - Vacation of Board Decision - Agreement of Parties, 35.24 35.06

1288
CAROLINA STALITE COMPANY
BARB 79-319-P
April 14, 1980
ALJ - Final
12/80 p3519

77: 3(h)(1)

1287
CAROLINA STALITE COMPANY
BARB 79-319-P
December 2, 1980
ALJ - Review Granted
12/80 p3508

30 CFR 56.14-1
30 CFR 56.14-6
30 CFR 56.12-20
30 CFR 56.4-24(c)

1246
CASH & CARRY GRAVEL, INC.
LAKE 80-48-M
November 13, 1980
ALJ - Final
11/80 p3271

30 CFR 50.30

285
CATRONS COAL COMPANY
BARB 78-416-P
September 26, 1978
ALJ - Final
Unbound

77: 110(i)

731
CEDAR COAL COMPANY
WEVA 80-106
March 27, 1980
ALJ - Final
3/80 p746

PA
30 CFR 75.400

129
CEDAR LAKE SAND & GRAVEL COMPANY
79-C-181
November 9, 1979
DISTRICT COURT
N/A*

Operator's sand and gravel operation is within coverage of 1977 Act since pit from which sand and gravel is removed falls squarely within definition of "mine" in Act.

Warrantless inspections under 1977 Act withstand constitutionality challenge since mining industry is pervasively regulated and 1977 Act inspection provision places limitations on use of inspection and is more narrowly drawn than comparable OSHA provision.

77: 3(h)
COVERAGE - Mines - Sand and Gravel Pit, 5.106
77: 104(a)
INSPECTIONS - Sand and Gravel Pit - Lack of Warrant - Constitutionality, 22.05

664
CEMENT DIVISION, NATIONAL GYPSUM COMPANY
VINC 79-154-PM
December 26, 1979
ALJ - Review Granted
12/79 p2115

77: 104(a)
77: 104(e)
30 CFR 56.12-32
30 CFR 56.11-1
30 CFR 56.4-33
30 CFR 56.12-34

68
CENTRAL PRE-MIX CONCRETE COMPANY
DENV 79-62-PM
June 7, 1979
ALJ - Final
6/79 p522*

(Reference Docket Number 79-126-PM)

"Do not enter while operating" sign and chain around conveyor prevents chained-off area from being walkway, thereby relieving operator from compliance with 30 CFR §56.9-7, which requires that unguarded conveyors with

Fact that independent contractor failed to put cover plate over electric motor of conveyor is no defense to 30 CFR §56.12-32, which requires operator to provide such cover plates.

30 CFR 56.9-7
HAULING - Unguarded Conveyors - "Do Not Enter" Sign - Cement Opertions, 56.09
30 CFR 56.12-32
ELECTRICAL HAZARDS - Cover Plates - Cement Opertions - Independent Contractor, 56.12 5.108

140
CENTRAL PRE-MIX CONCRETE COMPANY
DENV 79-220-PM
September 26, 1979
ALJ - Final
9/79 p1424*

(Reference Docket Number 79-221-PM)

Presence of unguarded tail pulleys, although located in isolated areas where employees would not normally travel, violated 30 CFR §56.14-1 since they were adjacent to walkway where miners passed while performing maintenance and cleanup work on belts and pulleys.

Guard on V-belt drive which did not extend low enough to protect workers from pinch point was inadequate and constituted violation of 30 CFR §56.14-1 because there was a possibility, however remote, that worker walking along adjacent walkway could become entangled in exposed pulley.

Company violated 30 CFR §56.12-32 where failure to have cover plate on electric motor presented remote possibility that someone working near exposed box would place hand tools in uncovered plate area, thereby breaking insulation on wires or contacting conductors.

30 CFR 56.14-1
MECHANICAL EQUIPMENT - Guards - Tail Pulleys - Sand/Gravel Operations, 56.14 37.15

30 CFR 56.14-1
MECHANICAL EQUIPMENT - Guards - Belt Drive - Sand/Gravel Operations, 56.14
30 CFR 56.12-32
ELECTRICAL HAZARDS - Cover Plate - Motor - Sand/Gravel Opeations, 56.12

1149
CENTRAL PRE-MIX CONCRETE COMPANY
WEST 80-325-M
September 19, 1980
ALJ - Final
10/80 p2825

PS

1075
CHAPPERAL COAL COMPANY
KENT 80-88-D
August 28, 1980
ALJ - Final
8/80 p2461*

Miner's complaint, that operator discriminated against him by discharging him because of his concern about operator's failure to provide safe working conditions for miners, must be dismissed when evidence established that condition with which miner was concerned was not hazardous and that primary reason for discharge was miner's inability to perform his work satisfactorily and his frequent arguements with other miners.

77: 105(c)
DISCRIMINATION-Safety Complaints to Operator-Miner's Performance of Work-Grounds for Discharge, 30.10

169
CHARLES T. SINK
77-2614
January 24, 1980
4th Cir Court
N/A*

Small one-man mine is not exempt from warrantless inspections pursuant to 1969 Act since Congress has legitimate interest in protecting all persons from hazardous conditions and operator's privacy is protected because inspector must get injunction if refused entry.

69: 104(a)
COVERAGE - Small One-man Mine - Warrantless Inspection - Congress' Legitimate Interest, 5.106 22.05

753
CHARLES W. MILLER
LAKE 79-282-D
February 5, 1980
ALJ - Appealed
2/80 p294*

(Reference 7th Cir. Number 80-1536)

Applicant's complaints about assigned duties not registered until halfway through shift and mere disagreements between miner and management are not "protected activity" under Act and cannot be grounds for discrimination charge on basis of safety complaints to operator.

77: 105(c)(2)
DISCRIMINATION - Protected Activity - Complaints Made During Course of Shift, 30.055

636
CHAROLAIS COAL CORPORATION
BARB 78-66
October 16, 1979
ALJ - Final
10/79 p1614

69: 110(b)

789
CHRISTOPHER COAL COMPANY
MORG 76-8-P
October 25, 1978
RC
3/79 P1*

(Reference Old Docket Number IBMA No. 77-7)

In testing return air from bleeder entry for compliance with methane concentration limit of 30 CFR §75.329, measurement should be made within bleeder split but as close as possible to point where air from bleeder split joins air from other split.

Mine operator's failure to withdraw miners from area of mine where air from bleeder entry contained excessive concentration of methane until withdrawal was ordered by inspector, although management was aware that conditions constituted imminent danger and that withdrawal of miners was appropriate, constitutes gross negligence, and, together with other considerations, warrants assessment of $6,500 penalty for established violation of 30 CFR §75.329.

30 CFR 75.329
VENTILATION - Bleeder Systems - Location of Methane Measurement, 75.0329
30 CFR 75.329
PENALTIES - Ventilation - Excessive Methane Concentration - Gross Negligence, 26.30 75.0329
69: 303(z)(2)
69: 109(a)(1)

201
CIANBRO CORPORATION
WILK 79-89-PM
December 31, 1979
ALJ - Final
12/79 p2207*

Failure to have ladder as means of access to walkway along conveyor belt constitutes violation of requirement under 30 CFR §56.11-1 that safe means of access be provided to all workplaces because miner might attempt to gain access to walkway without ladder and subject himself to possible injury.

30 CFR 56.11-1
TRAVELWAYS - Safe Access - Ladder, 56.11

1086
CLARK BROTHERS CONTRACTORS
DENV 79-475-PM
June 19, 1980
ALJ - Review Denied
Unbound

866
CLEMENS COAL COMPANY
CENT 79-32
June 19, 1980
ALJ - Final
6/80 p1511

PS

460
CLEVELAND CLIFFS IRON COMPANY
VINC 78-300-M
September 8, 1978
ALJ - Final
Unbound

30 CFR 55.9-22

654
CLEVELAND CLIFFS IRON COMPANY
VINC 79-68-M
December 3, 1979
ALJ - Review Granted
12/79 p1965

77: 104(b)
30 CFR 55.9-22

1300
CLIMAX MOLYBDENUM COMPANY
DENV 78-541-M
December 16, 1980
ALJ - Final
12/80 p3617

30 CFR 56.5-50

1307
CLIMAX MOLYBDENUM COMPANY
DENV 78-553-M
December 18, 1980
ALJ - Review Granted
12/80 p3681

30 CFR 57.12-82
30 CFR 57.12-10

512
CLIMAX MOLYBDENUM COMPANY
DENV 78-556-M
April 9, 1979
ALJ - Final
4/79 p213

77: 105(d)

198
CLIMAX MOLYBDENUM COMPANY
DENV 78-581-M
December 28, 1979
ALJ - Final
12/79 p2180*

Electrical cable with faulty insulation constituted imminent danger even though insulation was not completely worn through because, when insulation is reduced to certain point, insulated cable assumes properties of bare wire.

Provisions of National Electrical Code which address grounding of electrical system have not been incorporated into standards codified under 30 CFR §57.12 and are not specifically applicable to underground metal and nonmetal mines.

77: 107(a)
IMMINENT DANGER - Electrical Cable - Partly Worn-through Insulation - Bare Wire, 24.50 57.12
30 CFR 57.12
ELECTRICAL HAZARDS - National Electrical Code - Incorporation into Standards - Metal & Nonmetal Mines, 57.12

351
CLIMAX MOLYBDENUM COMPANY
DENV 79-3-M
January 10, 1979
ALJ - Reaffirmed
Unbound

29 CFR 2700.9 (I)

350
CLIMAX MOLYBDENUM COMPANY
DENV 79-3-M
February 2, 1979
ALJ - Review Granted
Unbound

29 CFR 2700.9 (I)

371
CLIMAX MOLYBDENUM COMPANY
DENV 79-3-M
February 5, 1979
ALJ - Errata
Unbound

95
CLIMAX MOLYBDENUM COMPANY
DENV 79-3-M
September 21, 1979
RC - Reverse & Remand
9/79 p1309*

(Reference Docket Numbers 79-4-M through 79-13-M)

Judge's dismissal of operator's applications for review for failure to comply with prehearing order was abuse of discretion in view of judge's failure to specify date for compliance with order.

29 CFR 2700.9 (I)
REVIEW COMMISSION PROCEDURE - Prehearing Order - Lack of Compliance Date - Abuse of Discretion, 35.16 35.22

588
CLIMAX MOLYBDENUM COMPANY
DENV 79-102-M
August 14, 1979
ALJ - Review Granted
8/79 p1044

30 CFR 57.5-5

146
CLIMAX MOLYBDENUM COMPANY
DENV 79-102-M
October 31, 1979
RC - Denying Record Suppl
10/79 p1499*

(Reference Docket Numbers 79-103-M, 79-104-M, 79-105-M)

Operator's motion that Commission accept deposition of MSHA inspector and other documents not in hearing record as attachments to its brief on discretionary review is denied since §113(d)(2)(C) of Federal Mine Safety and Health Act of 1977, which limits material Commission can consider on review, evinces Congress' view that administrative law judge should first be given opportunity to admit and examine evidence.

77: 113(d)(2)(C)
REVIEW COMMISSION PROCEDURE - Discretionary Review - Attachment of Documents to Brief - Hearing Record, 35.24 35.20 35.30

179
CLIMAX MOLYBDENUM COMPANY
DENV 79-102-M
January 11, 1980
RC - ALJ Affirmed
Not Printed*

(Reference Docket Numbers 79-103-M, 79-104-M, 79-105-M)

Operator's motion that Commission remand case to administrative law judge for sole purpose of admitting deposition into evidence is denied since remand would circumvent Congress' intent, as reflected in §113(d)(2)(C) of 1977 Act, that judge be given first opportunity to examine evidence and operator stated no reason why it failed to enter deposition into evidence when case was before judge.

77: 113(d)(2)(C)
REVIEW COMMISSION PROCEDURE -Remand to Administrative Law Judge - Admission of New Evidence - Hearing Record, 35.24 35.30 35.22

1299
CLIMAX MOLYBDENUM COMPANY
DENV 79-122-M
December 16, 1980
ALJ - Final
12/80 p3613

30 CFR 56.5-50

403
CLIMAX MOLYBDENUM COMPANY
DENV 79-159-M
March 16, 1979
ALJ - Final
3/79 p111

1134
CLIMAX MOLYBDENUM COMPANY
DENV 79-102-M
October 7, 1980
RC - Appealed
10/80 p2748*

(Reference 10th Cir. Number 80-2187)

Secretary's argument, that his vacation of contested citation automatically deprives Review Commission of jurisdiction over case, is rejected and Commission must ensure that cases are terminated on terms in accordance with Act; accordingly, where Secretary conceded that he could not prove that cited violations occurred and moved to vacate citations, judge should vacate citations with prejudice.

Operator's request for declaratory order interpreting dust standard, 30 CFR 57.5-5, because operator alleged that Secretary contemplated future enforcement based on Secretary's alleged erroneous interpretation, is denied because operator is not in position of party which must act at its peril if declatory relief is denied.

Operator's request that its litigation expenses be set-off against future civil penalties where Secretary vacated citations prior to hearing is denied, because such set-off is not appropriate relief and litigation expenses operator has incurred in present case will not have deterrent effect against future violations as in case where set-off of losses caused by later-vacated withdrawal orders against civil penalty for underlying violation is allowed.

COMMISSION JURISDICTION - Secretary's Vacation of Citation - Continuance of Judge's Jurisdiction, 35.02 35.22
30 CFR 57.5-5
REMEDIES - Declaratory Relief - Interpretation of Standard - Peril of Parties, 35.50
REMEDIES - Set-Off of Litigation Expenses Against Future Penalties, 35.50

1237
CLIMAX MOLYBDENUM COMPANY
DENV 79-196-M
October 17, 1980
ALJ - Final
10/80 p2978*

(Reference WEST 79-27-M)

Imminent danger withdrawal order issued under Section 107(a) of Federal Mine Safety and Health Act for allegedly hazardous conditions involving drill rig is vacated where, at time inspector issued order, drill rig was shut down, drill motor had been removed, no drilling or mining was taking place, and nearest employees were working in another section 500 feet away.

Standard at 30 CFR 57.12, requiring cables entering electrical compartment to enter only through proper fittings, is violated when Chase Nipple does not permit cable to be maintained in "locked-in" or rigid position and does not provide adequate protection to prevent cable or cable conductors from being pulled out of box and disconnected.

Failure to install outer jacket on cable splice renders splice inadequate in violation of 30 CFR 57.12-13, because cable in that condition is not mechanically as strong as original cable with outer jacket intact.

Fact that several steps were required to activate flow of current to motor legs is no defense to citation for failure to lock our main switchbox, as required by 30 CFR 57.12-16, while mechanical work was being performed.

Citation for violation of 30 CFR 57.12-13, issued because of alleged inadequate splice on power supply cable to welder, is vacated where evidence is limited to inspector's visual observation that taped splice was torn, coupled with use of Tic Tracer device.

77: 107(a)
IMMINENT DANGER - Hazardous Drill Rig - Employee Exposure, 24.50
30 CFR 57.12
ELECTRICAL HAZARDS - Power Cable Entering Switchbox - Improper Bushing, 57.12
30 CFR 57.12-13
ELECTRICAL HAZARDS - Inadequate Splice in Power Cable, 57.12
30 CFR 57.12-16
ELECTRICAL HAZARDS - Power Switches - Failure to Lock Out While Work is Preformed, 57.12
30 CFR 57.12-13
ELECTRICAL HAZARDS - Inadequate Splice - Cable to Welder, 57.12
30 CFR 57.12-30

501
CLIMAX MOLYBDENUM COMPANY
DENV 79-300-M
April 4, 1979
ALJ - Final
4/79 p87

77: 104(d)(1)

1188
CLIMAX MOLYBDENUM COMPANY
DENV 79-393-PM
October 29, 1980
ALJ - Final
10/80 p3158*

Routine operation of daily scaling down of travelway by either safety miner or specifically assigned two-man crew is in compliance with safety standard 30 CFR 57.3-22 which requires that ground conditions along travelways be examined periodically and scaled or supported as necessary.

30 CFR 57.3-22
GROUND CONTROL - Travelway - Daily Scaling Down, 57.03

755
CLIMAX MOLYBDENUM COMPANY
DENV 79-396-PM
February 11, 1980
ALJ - Final
2/80 p360*

Dumping sites not equipped with berms or dumper blocks violate requirement of 30 CFR §75.9-54 that berms, etc., be used at "dumping locations" even though operator is not actually engaged in dumping when cited if operator uses berms, etc., when dumping is in progress.

30 CFR 57.9-54
HAULAGE - Dumping sites - Berms - Continuous Requirement, 57.09

1234
CLIMAX MOLYBDENUM COMPANY
WEST 79-21-M
October 9, 1980
ALJ - Final
10/80 p2873*

(Reference WEST 79-24-M)

Issuance of imminent danger withdrawal order under Section 107(a) of 1977 Act, because inspector observed unconsolidated material on 80-foot high bank above work site and allegedly observed cantaloupe-size rock fall to work site, is vacated because inspector testified he did not proceed immediately to area, and, once area was withdrawn, he allowed employees to re-enter to retrieve tools and testimony indicates that conditions did not present impending disaster.

Presence of loose rock and unconsolidated materials on 80-foot highwall bank over work site constitutes unsafe ground condition within meaning of 30 CFR 57.3-5, and failure of operator to insure that area was scaled in its entirety constitutes violation of standard.

77: 107(a)
IMMINENT DANGER - Presence of Loose Rock on Highwall Bank - Impending Disaster, 24.50
30 CFR 57.3-5
GROUND CONTROL - Presence of Loose Rock on Highwall Bank, 57.03

711
CLIMAX MOLYBDENUM COMPANY
WEST 79-92-RM
February 25, 1980
ALJ - Final
2/80 p542*

Refusal by mine operator to permit Mine Safety and Health Administration inspector to take photographic equipment on general inspection in order to document conditions and practices alleged to be violations at time of inspection, while not directly a refusal of right-of-entry, is violation of Sec. 103(a) of Federal Mine Safety and Health Act of 1977 because use of cameras by inspectors is extension of warrantless inspection authorized by Sec. 103(a) of Act.

77: 103(a)
INSPECTIONS - Warrantless Searches - Use of Photographic Equipment, 22.05
77: 104(b)

1099
CLIMAX MOLYBDENUM COMPANY
WEST 79-192-M
July 25, 1980
ALJ - Final
7/80 p1884*

Impossibility of compliance with safety regulation is affirmative defense to cited violation, so that citation for violation of 30 CFR §57.11-2, for failing to provide handrails on elevated walkway which is used to rotate pipe, must be vacated when evidence established that workers must remove handrails in order to move pipe, and workers were given alternate protection by tying off when using walkway.

Citation issued for operator's failure to provide handrails along top of flat roof shed must be vacated because 30 CFR §57.11-2 applies only to crossovers, elevated walkways, elevated ramps, and stairways, and top of shed is not covered by descriptions in standard.

30 CFR 57.11-2
TRAVELWAYS - Handrails on Elevated Walkways-Impossibility of Compliance-Alternative Protection Provided, 57.11 37.10
30 CFR 57.11-2
TRAVELWAYS - Handrails on Elevated Walkway - Applicability of Standard, 57.11

1100
CLIMAX MOLYBDENUM COMPANY
WEST 79-301-M
July 25, 1980
ALJ - Final
7/80 p1967*

Citation for violation of 30 CFR §50.10 for failure to immediately notify Mine Safety and Health Administration of accident on mine property must be vacated when evidence establishes that injury sustained was "serious" but not "life threatening," because regulation requires reporting only of "accident," which has been defined as "injury which has reasonable potential to cause death."

Provisions of 30 CFR §50.12 do not require operator to preserve site of accident until it is determined whether accident is immediately reportable because, while operator may be acting at its peril in not preserving site if it develops that injury does have reasonable potential for death, necessity to preserve does not occur until reasonable potential for death has arisen.

30 CFR 50.10
REPORTING - Accident - Immediate Notification - Life-Threatening Injury, 50.0208 50.10
30 CFR 50.12
REPORTING - Accident - Preservation of Site - Reasonable Potential for Death, 50.0208 50.12

1101
CLIMAX MOLYBDENUM COMPANY
WEST 79-303-M
July 25, 1980
ALJ - Final
7/80 p1918*

Citation for violation of 30 CFR §57.12-30, which requires that potentially dangerous condition be corrected before equipment is energized, must be vacated when issued for motor which lacked junction box with bushing, where evidence established that motor was designed without junction box and that there was no shock hazard or dangerous condition.

Citations for violations of 30 CFR §57.12-23, which requires guarding of electrical connections which cannot be insulated, must be vacated when evidence establishes that cited, uninsulated bus bars were located more than eight feet above floor and National Electrical Code which is applicable to operator's mine provides that bus bars are protected by location if eight feet above floor.

30 CFR 57.12-30
ELECTRICAL HAZARDS - Dangerous Electrical Condition - Design of Equipment, 57.12
30 CFR 57.12-23
ELECTRICAL HAZARDS - Guarding Bus Bars - Protection by Location, 57.12

778
CLIMAX MOLYBDENUM COMPANY
WEST 79-325-RM
February 19, 1980
ALJ - Final
2/80 p470*

Facts that truck driver had no trouble with braking systems on haulage rig on previous shift, that dynamic braking system must have been working when rig negotiated curve before accident occurred, and skid marks indicated heavy use of mechanical braking system, warrant vacation of citation alleging operator's unwarrantable failure to maintain brakes.

30 CFR 55.09 77: 104(d)(1)
HAULAGE - Unwarrantable Failure - Brakes - Haulage Rig - Accident, 55.09 24.20

775
CLINCHFIELD COAL COMPANY
NORT 78-325-P
January 14, 1980
ALJ - Final
1/80 p25*

(Reference Docket Numbers NORT 78-364-P through NORT 78-369-P and NORT 78-376-P)

Fact that deceased locomotive operator might have avoided collision but had crouched down to avoid cold air and failed to see stalled cars ahead is no defense to violation of requirement of 30 CFR §75.1403-10 that reflectors be put on cars because it is management's obligation to provide shields and goggles to allow operator to withstand cold air and safely operate locomotive.

Civil penalty of $9,000 for violation of requirement of 30 CFR §75.1403-10 that warning reflectors be placed on railroad cars is warranted because stalled locomotive that caused fatal accident had just come from repair shop and was not functioning properly but was still utilized, operator of stalled locomotive did not report to dispatcher that train was stopped, and personnel were not trained in safety procedures.

Failure to test flame safety lamps in gas box before use in underground methane tests did not violate 30 CFR §75.317 because placing lamps in gas box may destroy, rather than ensure, their permissibility.

Failure to clean flame safety lamps before use in underground methane tests does not violate 30 CFR §75.317 because MSHA inspector did not notify operator of what it was being charged with, inspector knew little about condition of lamps, and failure to clean does not necessarily mean that lamp is impermissible.

Accumulations of float coal dust and loose coal inby tailpiece for distance of 500 feet and inby survey station for distance of 1,100 ranging in depth from 1/4 inch to 20 inches in same vicinity as potential ignition sources constituted violation of 30 CFR §75.400.

Miner's use of hand-held drill in underground mine was impermissible and violated 30 CFR §75.501-2(a)(2) despite fact that 30 CFR §75.1106 permits use in underground mines of cutting torch or welding equipment, which are more dangerous than drill.

30 CFR 75.1403-10
MANTRIPS - Locomotive Operator - Collision - Cold Air - Shields and Goggles, 75.1403 35.25
30 CFR 75.1403-10
MANTRIPS - Civil Penalty - Stalled Locomotive - Warning Reflector - Safety Procedures, 75.1403 26.01
30 CFR 75.317
VENTILATION - Flame Safety Lamps - Gas Box - Permissibility, 75.0317
30 CFR 75.317
VENTILATION - Flame Safety Lamps - Failure to Clean - Permissibility - Notification of Operator, 75.0317 24.03
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulations - Float Coal Dust and Loose Coal - Potential Ignition Sources, 75.0400
30 CFR 75.501-2(a)(2)

ELECTRICAL HAZARDS - Hand-held Drill - Permissibility - Underground Mine, 75.0501

688
CLINCHFIELD COAL COMPANY
NORT 78-337-P
February 4, 1980
ALJ - Final
2/80 p290

69: 104(c)

24
CLINCHFIELD COAL COMPANY
NORT 78-344-P
February 26, 1979
ALJ - Final
Unbound*

(Reference Docket Number 78-345-P)

MSHA counsel's failure to object at hearing to operator's evidence on issue of impossibility of compliance amounts to waiver of right to so object.

Difficulty of taking old machine and installing equipment on it to meet new safety standards and still accomodate operator of machine is defense to violation of requirement of 30 CFR §75.1710-1(a)(4) that electric face equipment have canopies or cabs.

Unless operator is aware of accumulation of coal or coal dust or, by exercise of due diligence, should have been aware of accumulation and has failed to clean it up or to start cleaning it up, he has not violated 30 CFR §75.400, which prohibits such accumulation.

REVIEW COMMISSION PROCEDURE - Waiver of Secretary's Objection, 35.08
30 CFR 75.1710-1(a)(4)
CANOPIES AND CABS - Impossibility of Compliance - Underground Mines, 37.10 75.1710
30 CFR 75.400
COMBUSTIBLE MATERIALS - Due Diligence of Operator - Underground Mines, 75.0400
30 CFR 75.400

1315
CLINCHFIELD COAL COMPANY
NORT 78-387-P
December 30, 1980
ALJ - Final
12/80 p3742*

Operator violates requirements of 30 CFR 77.404 (maintenance of equipment) when brake on work deck is out of adjustment, is slipping, and shoes are not holding brake wheel because remaining brakes cannot handle load and defective brake presents safety hazard since displacement of deck, when brakes are applied, could cause employee to fall and injure himself.

30 CFR 77.404
MECHANICAL EQUIPMENT - Unsafe Work Deck - Brake Malfunction, 77.0404

1024
CLINCHFIELD COAL COMPANY
NORT 78-395-P
July 8, 1980
ALJ - Final
7/80 p1786

12
CLINCHFIELD COAL COMPANY
NORT 78-417-P
March 12, 1979
ALJ - Review Denied - Appealed
3/79 p99*

(Reference 4th Cir. Number 79-1306)

Lack of night-time illumination except cap lamps in surface areas of mine where supplies, railroad tracks, rocks and coal spillage constituted stumbling hazards violating 30 CFR §77.207.

30 CFR 77.207
ILLUMINATION - Safe Working Conditions - Surface Areas of Coal Mines, 77.0207

528
CLINCHFIELD COAL COMPANY
NORT 78-417-P
May 8, 1979
RC
5/79 p337

77: 113(d)(1)

758
CLINCHFIELD COAL COMPANY
NORT 78-417-P
April 8, 1980
4th Cir Court
Unpublished*

Administrative law judge's finding of violation of requirement of 30 CFR §77.207 that sufficient illumination be provided in all working areas is upheld since inspector relied on his informed judgement of what constituted sufficient illumination rather than on agency illumination guidelines alleged to be invalid by operator.

30 CFR 77.207
ILLUMINATION - Working Areas - Inspector's Informed Judgement - Invalid Illumination Standards, 77.0207 205.10

548
CLINCHFIELD COAL COMPANY
VA 79-64-D
November 10, 1979
ALJ - Final
11/79 p1866

77: 105(c)(2)

1174
CLINCHFIELD COAL COMPANY
VA 79-66
October 17, 1980
ALJ - Final
10/80 p3026*

Unprotected cavity in roof of underground coal mine does not violate 30 CFR 75.200 where provision of roof control plan requires that persons not work under unsupported roof except to install temporary supports was complied with.

Mine operator's action in sending bent guard for sprocket wheel to be repaired or replaced negates claim that guard is unnecessary; consequently, violation of 30 CFR 75.1722(a) is established.

30 CFR 75.200
ROOF SUPPORT - Unprotected Cavity - Roof Control Plan, 75.0200
30 CFR 75.1722(a)
MECHANICAL EQUIPMENT - Need for Guarding of Sprocket - Guard Being Repaired, 75.1722

1183
CLINCHFIELD COAL COMPANY
VA 79-98-R
October 23, 1980
ALJ - Review Denied
10/80 p3109

77: 104(b)

1105
CLM CORPORATION
VINC 79-153-PM
August 7, 1980
ALJ - Final
8/80 p2149*

Area alongside unguarded conveyor belt which is used by one employee who stands and moves in area to clean along rollers qualifies as walkway, and fact that area is not routinely used as pathway by other employees is not basis for restricting definition of walkway; operator's failure to provide emergency stop cord along length of unguarded conveyor constitutes violation of 30 CFR 56.9-7.

30 CFR 56.9-7
HAULAGE - Unguarded Conveyor Belt with Walkway - Emergency Stop cords Required, 56.09

773
CO-OP MINING COMPANY
DENV 75-207
April 21, 1980
RC
4/80 p784*

(Reference Docket Number DENV 76-6-P IBMA No. 77-30)

Administrative law judge's conclusion that inadequate temporary splice of trailing cable, which was laying on wet floor and could cause shock or fire, constituted violation of 30 CFR §75.603 is affirmed.

Administrative law judge, in de novo determination of amount of civil penalty, is not bound by formulas provided in 30 CFR §100, which govern method of computation utilized by MESA's Office of Assessments.

30 CFR 75.603
ELECTRICAL HAZARDS - Spliced Trailing Cable - Wet Floor - Shock or Fire Hazard, 75.0603
30 CFR 100
PENALTIES - De Novo Determination - Method of Computation - Office of Assessments, 26.05

291
CO-OP MINING COMPANY
DENV 77-87-P
October 10, 1978
ALJ - Final
Unbound

30 CFR 75.1715
30 CFR 75.1100-2(i)
30 CFR 75.316
30 CFR 77.215-1
30 CFR 70.250(a)
30 CFR 77.1605(d)
30 CFR 75.202
30 CFR 75.312
30 CFR 77.1606(e)

635
CO-OP MINING COMPANY
DENV 79-1-P
October 16, 1979
ALJ - Final
10/79 p1612

PS

1279
CO-OP MINING COMPANY
DENV 79-1-P
December 10, 1980
RC
12/80 p3475*

Administrative law judge erred in approving proposed penalty settlement of parties where parties' stipulation shows that alleged violation did not occur, because compliance with Federal Mine Safety and Health Act and its standards is not fostered by payment of civil penalty where stipulated facts establish that no violation occurred.

77: 110(k)
SETTLEMENTS - Judge's Erroneous Approval - Absence of Violation, 35.40

577
CO-OP MINING COMPANY
DENV 79-128-P
July 27, 1979
ALJ - Covering Order
7/79 p970

29 CFR 2700.5 (I)

578
CO-OP MINING COMPANY
DENV 79-128-P
July 27, 1979
ALJ - Order
7/79 p971

29 CFR 2700.26(d)(39) (I)

619
CO-OP MINING COMPANY
DENV 79-128-P
September 26, 1979
ALJ - Disciplinary Hearing
9/79 p1413

77: 110(k)

1034
COAL RESOURCES, INC.
WEVA 80-323
July 28, 1980
ALJ - Final
7/80 p1973

PS

138
COALTRAIN CORPORATION
MORG 79-26-P
November 30, 1979
RC - Reverse & Remand
11/79 p1831*

Judge's default decision against small, pro se operator who failed to respond to portion of pretrail order is reversed since operator substantially complied with order and record contains no indication that operator was not acting in good faith.

REVIEW COMMISSION PROCEDURE - Pretrial Order - Default
Judgement - Pro Se Operator - Substantial
Compliance, 35.16 35.22

708
COALTRAIN CORPORATION
MORG 79-26-P
January 23, 1980
ALJ - Show Cause Order
2/80 p511

30 CFR 77.410
30 CFR 71.500
30 CFR 77.1605(k)
30 CFR 77.1707(a)
30 CFR 77.1708
30 CFR 77.208(d)

707
COALTRAIN CORPORATION
MORG 79-26-P
February 21, 1980
ALJ - Review Granted
2/80 p510

PS

602
COASTAL STATES ENERGY COMPANY
DENV 79-88-P
September 5, 1979
ALJ - Final
9/79 p1337

29 CFR 2700.30

831
COLCHESTER STONE COMPANY
LAKE 79-259-M
March 31, 1980
ALJ - Final
Unbound*

Gap of 4 1/2 feet between handrail and walkway that is by area which accumulates dust and rock creates fall hazard and violates requirement of 30 CFR §56.11-12 that openings near travelways be protected by railings.

30 CFR 56.11-12
TRAVELWAYS - Handrail - 4 1/2 Foot Gap - Accumulated
Dust, 56.11

643
COMICO AMERICAN, INC.
WEST 79-212-M
October 26, 1979
ALJ - Final
10/79 p1712

29 CFR 2700.27

1182
CONCRETE MATERIALS, INC.
YORK 80-36-M
October 22, 1980
ALJ - Final
10/80 p3105*

Operator fails in constitutional due process challenge to 30 CFR 56.9-3 (powered mobile equipment shall be provided with adequate brakes) arguing that it fails to warn operators as to what is meant by "adequate brakes," because reasonably prudent person familiar with industry would know whether brakes were adequate and operator's own mechanic testified as to what he considered were adequate brakes.

Operator violates requirement of 30 CFR 56.9-3 (failure to provide adequate brakes) where brakes on No. 2 Euclid haulage truck failed to stop or hold empty truck at coast speed on five-degree slope, truck continued to roll 60 or 70 feet before stopping, and operator's mechanic testified truck should have stopped within 12 feet.

30 CFR 56.9-3
STANDARDS - Lack of Specificity - Due Process Requirements, 40.20 56.09
30 CFR 56.9-3
HAULAGE - Brakes - Haulage Truck, 56.09

757
CONROCK COMPANY
WEST 79-373-RM
February 12, 1980
ALJ - Final
2/80 p398*

(Reference Docket Number WEST 79-374-RM)

Use of personal protective equipment such as ear plugs satisfies requirement under 30 CFR §56.5-50 that workers not be exposed to excessive noise concentrations but only after administrative and engineering controls have failed to reduce noise.

30 CFR 56.5-50
NOISE - Personal Protective Equipment - Administrative and Engineering Controls, 56.05

159
CONSOLIDATION COAL COMPANY
DENV 79-59
October 30, 1979
ALJ - Final
10/79 p1766*

Violation of 30 CFR §77.604 exists when unprotected trailing cables are "run over" by mobile equipment rather than "damaged" in general, since MSHA's policy statement on standard uses terms "run over" and "damaged" interchangeably and provides that violation occurs when unprotected trailing cables are "run over" by mobile equipment.

Citation for violation of 30 CFR §77.604 is vacated since dragline bucket did not make contact with unprotected trailing cable and MSHA's policy statement interprets standard to require physical contact with cable before violation can be found to have occurred.

30 CFR 77.604
ELECTRICAL HAZARDS - Trailing Cables -"Run Over" - MSHA's Policy Statement, 77.0604 40.30
30 CFR 77.604
ELECTRICAL HAZARDS - Trailing Cables - Dragline Bucket - Physical Contact with Cable - MSHA'S Policy Statement, 77.0604 40.30

277
CONSOLIDATION COAL COMPANY
HOPE 78-205-P
September 21, 1979
ALJ - Final
Unbound

77: 110(i)
30 CFR 75.200

493
CONSOLIDATION COAL COMPANY
HOPE 78-424
July 19, 1978
ALJ - Final
Unbound

77: 105(d)

524
CONSOLIDATION COAL COMPANY
HOPE 78-433-P
April 30, 1979
ALJ - Final
4/79 p286

30 CFR 75.200

633
CONSOLIDATION COAL COMPANY
HOPE 78-569-P
October 15, 1979
ALJ - Final
10/79 p1606

PS

611
CONSOLIDATION COAL COMPANY
HOPE 79-157
September 19, 1979
ALJ - Final
9/79 p1358

77: 105(c)(2)

926
CONSOLIDATION COAL COMPANY
LAKE 80-78-D
May 5, 1980
ALJ - Final
5/80 p1056*

Miner who participates as miners' representative in walkaround activities with MSHA inspector is entitled to compensation for work he would have performed during time inspection was conducted so that if miner was to be engaged in special work that pays higher rate than general work, he must be compensated at higher rate even if work was never performed, since miners' representative must not suffer loss of pay during participation in inspection according to section 103(f) and 105 of Federal Mine Safety and Health Act of 1977.

77: 105(c) 77: 103(f)
DISCRIMINATION - Protected Activity - Walkaround Pay, 30.051 22.20

1146
CONSOLIDATION COAL COMPANY
MORG 76X138
October 27, 1980
RC
10/80 p2812*

Operator's argument, that each miner who refused to ride allegedly unsafe elevator failed to notify Secretary of Interior, his authorized representative, or mine operator of alleged danger and that therefore miners were not protected under discrimination clause of 1969 Coal Act, is rejected and administrative law judge's determination that all miners communicated their fears over safety to mine operator by both words and deeds is upheld.

Operator's argument, that miners who refused to ride allegedly unsafe elevator were not entitled to compensation under provisions of collective bargaining agreement because union safety committee declared mine an imminent danger, is rejected and judge's decision awarding miners compensation under discrimination clause of 1969 Coal Act is upheld, because judge rested decision on finding that benefits ordinarily conferred were withheld in retaliation, not that miners were entitled to compensation by their contract.

69: 110(b)
DISCRIMINATION - Refusal to Ride Elevator - Retailiation - Notification to Secretary, 30.053 30.055
69: 110(b)
DISCRIMINATION - Entitlement to Compensation - Effect of Union contract, 30.50

21
CONSOLIDATION COAL COMPANY
MORG 77-20
May 8, 1979
RC - Appealed
5/79 p338*

(Reference Old Docket Number IBMA No. 77-62)

Operator's requirement that miner obtain permission before leaving job to perform duties as safety committeeman and letters of reprimand for not obtaining permission constituted unlawful discrimination against miner because he engaged in activities protected by Section 110(b) of 1969 Act.

69: 110(b)
DISCRIMINATION - Protected Activity - Duties of Safety Committeeman, 30.051

234
CONSOLIDATION COAL COMPANY
MORG 77-34
June 21, 1978
ALJ - Final
Unbound

69: 110(b)

317
CONSOLIDATION COAL COMPANY
MORG 77-56
December 6, 1978
ALJ - Review Denied
Unbound

77: 104(b)
30 CFR 75.200

318
CONSOLIDATION COAL COMPANY
MORG 77-56
December 6, 1978
RC
Unbound

77: 104(b)
30 CFR 75.200

431
CONSOLIDATION COAL COMPANY
MORG 78-13
December 13, 1978
ALJ - Final
Unbound

77: 110(a)

432
CONSOLIDATION COAL COMPANY
MORG 78-29
December 15, 1978
ALJ - Final
Unbound

77: 104(d)

341
CONSOLIDATION COAL COMPANY
MORG 78-310-P
February 2, 1979
ALJ - Final
Unbound

30 CFR 75.400

443
CONSOLIDATION COAL COMPANY
MORG 78-317
June 30, 1978
ALJ - Reversed
Unbound

77: 105(d)

258
CONSOLIDATION COAL COMPANY
MORG 78-320-P
August 17, 1978
ALJ - Final
Unbound

30 CFR 70.100(b)
30 CFR 75.512
PS

445
CONSOLIDATION COAL COMPANY
MORG 78-323
July 11, 1978
ALJ - Final
Unbound

77: 105(d)

430
CONSOLIDATION COAL COMPANY
MORG 78-331
October 20, 1978
ALJ - Final
Unbound

77: 104(d)
30 CFR 75.517
30 CFR 75.400

244
CONSOLIDATION COAL COMPANY
MORG 78-334
June 28, 1978
ALJ - Final
Unbound

77: 105(d)

13
CONSOLIDATION COAL COMPANY
MORG 78-335
February 28, 1979
ALJ - Final
Unbound*

Loader left with electrical leads to bolter unit's pump motor torn off and exposed constituted imminent danger under Section 107(a) of Federal Mine Safety and Health Act of 1977 and justified issuance of withdrawal order, since any person who pushed button activating bolter would be exposed to electric burn or shock hazard.

77: 107(a)
IMMINENT DANGER - Loader with Exposed Electrical Leads - Shock Hazard, 24.50

323
CONSOLIDATION COAL COMPANY
MORG 78-337
December 14, 1978
ALJ - Final
Unbound

77: 104(d)(1)
30 CFR 75.1405
30 CFR 75.322

668
CONSOLIDATION COAL COMPANY
MORG 78-339-P
September 29, 1978
ALJ - Final
12/79 p2147

PS

262
CONSOLIDATION COAL COMPANY
MORG 78-343-P
August 24, 1978
ALJ - Final
Unbound

30 CFR 75.400

433
CONSOLIDATION COAL COMPANY
MORG 78-344
October 27, 1978
ALJ - Final
Unbound

77: 104(d)(1)
30 CFR 75.400

479
CONSOLIDATION COAL COMPANY
MORG 78-370
October 26, 1978
ALJ - Final
Unbound

77: 105(c)(3)

953
CONSOLIDATION COAL COMPANY
MORG 79-13
January 24, 1979
ALJ - Review Granted
8/80 p2132

29 CFR 2700.29

91
CONSOLIDATION COAL COMPANY
MORG 79-13
September 4, 1979
RC - Reverse & Remand
9/79 p1300*

Period of 30 days provided in Interim Procedural Rule 29 for filing applications for compensation can be extended in appropriate circumstances.

Applicant's attempt to secure compensation from operator when it first discovered potential claim and lack of prejudice to operator make extension of 30-day filling period appropriate.

29 CFR 2700.29 (I)
COMPENSATION - Application - Extension of Filing Period, 20.13 37.01
29 CFR 2700.29 (I)
COMPENSATION - Application - Appropriate Circumstances for Filing Time Extension, 20.13 37.01

548
CONSOLIDATION COAL COMPANY
MORG 79-56-P
June 13, 1979
ALJ - Final
6/79 p533

PS

551
CONSOLIDATION COAL COMPANY
MORG 79-63-P
June 19, 1979
ALJ - Final
6/79 p597

PS

79
CONSOLIDATION COAL COMPANY
MORG 79-70
June 15, 1979
ALJ - Final
6/79 p542*

Fact that roof support violations existed for several days justifies finding of knowledge of violations on part of mine operator and of unwarrantable failure to comply with 30 CFR §75.200, and supports issuance of withdrawal order under Section 104(d)(2) of 1977 Act.

Operator's assertion that roof control violations were not correct because section was idle and miners were on vacation demonstrates operator's knowledge and unwarrantable failure.

Beginning abatement of roof support violations several hours before issuance of order of unwarrantable failure does not preclude issuance of order.

77: 104(d)(2) 30 CFR 75.200
ROOF SUPPORT - Unwarrantable Failure - Operator's Knowledge - Duration of Violations, 75.0200 24.20
77: 104(d)(2) 30 CFR 75.200
ROOF SUPPORT - Unwarrantable Failure - Miners on Vacation, 75.0200 37.10
77: 104(d)(2) 30 CFR 75.200
ROOF SUPPORT - Unwarrantable Failure - Attempt to Abate, 75.0200 37.01 28.50

76
CONSOLIDATION COAL COMPANY
MORG 79-108
June 19, 1979
ALJ - Final
6/79 p592*

Imminent danger existed where men on raised platform were not wearing safety belts, travelways and platform were not kept free of stumbling hazards, and floor of platform was icy and slippery

Fact that men working on dangerous raised platform were experienced is no defense to finding of imminent danger.

Fact tht raised platform was being constructed when found to be unsafe is no defense to finding of imminent danger.

77: 107(a)
IMMINENT DANGER - Raised Platform - Fall Protection, 24.50
77: 107(a)
IMMINENT DANGER - Raised Platform - Miners' Experience, 24.50 37.01
77: 107(a)
IMMINENT DANGER - Raised Platform under Construction, 24.50 37.10

741
CONSOLIDATION COAL COMPANY
MORG 79-109
January 22, 1980
ALJ - Final
1/80 p49*

Faced with situation of possible dam collapse and inundation of mine, inspectors need not have engineering expertise or await results of further testing of studies before taking immediate action to protect miners by issuing imminent danger withdrawal order.

Extrinsic factors off mine property such as possible dam collapse causing inundation of mine may serve as basis for finding of imminent danger affecting miners on mine property since 1977 Act has been liberally construed on side of miner safety.

Inspectors had enforcement jurisdiction over dam that existed off mine property since, while they may not have had jurisdiction over dam per se, they had jurisdiction under 1977 Act to determine existence of any imminent danger to miners caused by possible collapse of dam.

77: 107(a)
IMMINENT DANGER - Possible Dam Collapse - Inspector's Engineering Expertise - Withdrawal Order, 24.50 22.01
77: 107(a)
IMMINENT DANGER - Possible Dam Collapse - Extrinsic Circumstances Off Mine Property - Withdrawal Order, 24.50 22.01
77: 107(a)
IMMINENT DANGER - Dam Off Mine Property - Inspectors' Enforcement Jurisdiction, 24.50 22.01

606
CONSOLIDATION COAL COMPANY
PENN 79-2
September 17, 1979
ALJ - Final
9/79 p1347

PS

605
CONSOLIDATION COAL COMPANY
PENN 79-10
September 17, 1979
ALJ - Final
9/79 p1345

PS

599
CONSOLIDATION COAL COMPANY
PENN 79-11
September 4, 1979
ALJ - Final
9/79 p1330

PS

154
CONSOLIDATION COAL COMPANY
PENN 79-72-R
October 25, 1979
ALJ - Final
10/79 p1689*

Imminent danger withdrawal order issued because roof crack and fallen rock existed over large area of mine is vacated since crucial issue in finding of imminent danger is not size of area involved, but whether there is time for abatement of condition before reasonable chance of death or serious injury.

30 CFR 75.400 77: 104(d)(1)
WITHDRAWAL ORDERS - Imminent Danger-Roof Crack & Fallen Rock-Time Element-Abatement before Death or Serious Harm, 24.50

153
CONSOLIDATION COAL COMPANY
PENN 79-75
October 25, 1979
ALJ - Final
10/79 p1685*

Accumulation of coal four feet wide, 60 feet long, and seven inches deep that existed for up to two weeks in area where there were energized trailing cables and nip station constituted unwarrantable failure to comply with 30 CFR §75.400, since accumulation violated operator's clean-up plan and operator should have known of accumulation through preshift and onshift examination.

Accumulation of coal in area where men were ready to go to work and that had not been blocked by posts constituted accumulation at "active working" under 30 CFR §75.400 and was caused by unwarrantable failure to comply with standard since operator should have known of accumulation through preshift and onshift examinations.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Two-week Accumulation - Energized Trailing Cables in Area - Unwarrantable Failure, 75.0400 24.20
30 CFR 75.400
COMBUSTIBLE MATERIALS - Coal Accumulation - "Active Working" - Unwarrantable Failure, 75.0400 24.20 75.00025

1115
CONSOLIDATION COAL COMPANY
PENN 79-105
July 11, 1980
ALJ - Final
7/80 p1809*

Operator violates 30 CFR §75.1704, which requires that at least two separate travelable passageways be maintained in safe condition, when roof falls occur in one escapeway which makes passage difficult even though roof falls occurred between time of last regular weekly inspection and date of citation, because regulation imposes absolute duty upon operator with respect to condition of passageways and does not distinguish between conditions which occur due to unpredictable circumstances and those caused by operator's lack of due dilligence.

Dismissal of citation for violation of 30 CFR §75.303, which provides that coal-carrying belt conveyors be examined after each coal producing shift has begun, is justified when citation was issued only three and one-half hours after production shift had begun because regulation does not require immediate examination of belt conveyors after start of shift and evidence established that operator intended to make examination sometime during shift.

30 CFR 75.1704
ESCAPEWAYS - Maintenance in Safe Condition - Operator's Absolute Duty, 75.1704
30 CFR 75.303
VENTILATION - Examination of Coal-Carrying Belt Conveyors - Timing, 75.0303

770
CONSOLIDATION COAL COMPANY
PENN 79-113
February 28, 1980
ALJ - Final
2/80 p609*

Normal loading of mine cars while operator's mechanic was "troubleshooting" and service car spotter which operator knew was defective and unsafe violated 30 CFR §75.1725(a) requirement that machinery and equipment be maintained in safe operating condition and machinery and equipment in unsafe condition be removed from service immediately.

30 CFR 75.1725(a)
MECHANICAL EQUIPMENT - "Troubleshooting" - Failure to Remove from Service, 75.1725

817
CONSOLIDATION COAL COMPANY
PENN 80-16-R
May 9, 1980
ALJ - Final
5/80 p1084

30 CFR 75.200

729
CONSOLIDATION COAL COMPANY
PENN 80-19
March 19, 1980
ALJ - Final
3/80 p738

PA

1073
CONSOLIDATION COAL COMPANY
PENN 80-149
August 27, 1980
ALJ - Final
8/80 p2449

30 CFR 75.202

1040
CONSOLIDATION COAL COMPANY
PENN 80-165-R
August 6, 1980
ALJ - Final
8/80 p2144*

Issuance of imminent danger withdrawal order pursuant to section 107(a) of Federal Mine Safety and Health Act of 1977, when inspector finds that spacing of clamps on hoist rope are not in accordance with standards described in 30 CFR 75.1401-1 and also finds bulges between clamps, is justified when evidence established that misspacing could be due to indequate torque on clamps and could cause rope to continue to slip so that rope could pull off thimble, causing cage to fall down shaft, killing or injuring miners in cage.

Primary factor in determining validity of imminent danger withdrawal order issued when inspector finds that spacing of clamps on hoist rope is not in accordance with standards described in 30 CFR 75.1401-1 is cause behind these shifts in position between time rope was originally installed and time it was inspected, and relative strength of rope under different, unshifting clamp spaces is not material to validity of order.

77: 107(a) 30 CFR 75.1401-1
IMMINENT DANGER - Justification for Withdrawal Order - Unusual Spacing of Clamps on Ropes of Manhoist, 24.50 75.1401
30 CFR 75.1401-1
MANTRIPS - Hoisting Equipment - Standards for Ropes - Clamp Spacings, 75.1401

1243
CONSOLIDATION COAL COMPANY
PENN 80-224-R
November 6, 1980
ALJ - Final
11/80 p3253

30 CFR 75.1404-1

1000
CONSOLIDATION COAL COMPANY
PENN 80-254-R
September 22, 1980
ALJ - Final
9/80 p2665

77: 104(d)(1)

1216
CONSOLIDATION COAL COMPANY
PENN 80-255-R
September 22, 1980
ALJ - Final
Unbound*

Mine Safety and Health Administration inspector abuses enforcement discretion in refusing to extend period for abatement of violation of accumulation standard, 30 CFR 75.400, and in issuing Section 104(b) withdrawal order, where operator made extraordinary good faith efforts and cleaned up all accumulations except for one small pile and where no increase in hazard would have resulted from requested short extension.

69: 104(b)
WITHDRAWAL ORDERS-Failure to Abate-Inspector's Refusal to Extend Abatement Period-Abuse Enforcement Discretion, 24.10 28.10
30 CFR 75.400

1240
CONSOLIDATION COAL COMPANY
PENN 80-287-R
November 5, 1980
ALJ - Final
11/80 p3226

387
CONSOLIDATION COAL COMPANY
PITT 77-28
July 31, 1978
ALJ - Final
Unbound*

Workers in mine who are idled by issuance of withdrawal order in preparation plant are entitled to compensation for idle time, despite fact that operator voluntarily withdrew miners from mine prior to issuance of order, because evidence established that operation of mine could not have continued for more than a few more hours if preparation plant was not operating.

69: 110(a) 69: 104(a)
COMPENSATION - Miners Idled by withdrawal Order - Voluntary Withdrawal by Operator, 20.13

374
CONSOLIDATION COAL COMPANY
PITT 77-88
July 7, 1978
ALJ - Final
Unbound*

Miners who are idled by issuance of withdrawal order in their operator's mine are entitled to compensation for idle time, despite fact that operator voluntarily withdrew miners prior to issuance of order.

69: 110(a) 69: 104(a)
COMPENSATION - Miners Idled by Withdrawal Order - Voluntary Withdrawal by Operator, 20.13

219
CONSOLIDATION COAL COMPANY
PITT 78-116
May 15, 1978
ALJ - Final
Unbound

69: 104(c)(2)
30 CFR 75.402-1

270
CONSOLIDATION COAL COMPANY
PITT 78-347
August 31, 1978
ALJ - Final
Unbound

77: 105(d)
29 CFR 2700.18(a) (I)

331
CONSOLIDATION COAL COMPANY
PITT 78-366-P
December 18, 1978
ALJ - Final
Unbound

30 CFR 77.1607(v)
30 CFR 77.1607(y)
30 CFR 77.1709
30 CFR 77.207

311
CONSOLIDATION COAL COMPANY
PITT 78-455
November 22, 1978
ALJ - Final
Unbound

77: 105(a)
77: 105(d)

319
CONSOLIDATION COAL COMPANY
PITT 78-479-P
December 7, 1978
ALJ - Final
Unbound

30 CFR 77.507
30 CFR 77.404(c)

424
CONSOLIDATION COAL COMPANY
PITT 79-86-P
March 21, 1979
ALJ - Final
3/79 p135

PS

56
CONSOLIDATION COAL COMPANY
PITT 79-161
April 12, 1979
ALJ - Final
4/79 p226*

Where a transformer is present in a battery charger, the citation of a battery charger under 30 CFR §75.1002 includes a transformer.

Unwarrantable failure under §104(d)(2) of Federal Mine Safety and Health Act of 1977 exists where longwall mining has been going on for 10 days before issuance of §104(d)(2) withdrawal order, evidence shows without dispute that for these 10 days a battery charger with transformer was in prohibited location in violation of 30 CFR §75.1002, and operator, through its management personnel, knew of situation during entire period.

30 CFR 75.1002
ELECTRICAL HAZARDS - Transformers - Battery Chargers, 75.1002
77: 104(d)(2) 30 CFR 75.1002
WITHDRAWAL ORDERS - Unwarrantable Failure to Comply - Sec. 104(d), 24.20

389
CONSOLIDATION COAL COMPANY
PITT 79-168
June 15, 1979
ALJ - Final
6/79 p538

77: 104(d)(2)
30 CFR 75.1707

603
CONSOLIDATION COAL COMPANY
PITT 79-191-P
September 7, 1979
ALJ - Final
9/79 p1340

PS

31
CONSOLIDATION COAL COMPANY
VINC 77-16-P
May 17, 1979
RC
5/79 p347*

(Reference Old Docket Number IBMA No. 77-18) (Reference Docket Numbers 77-18-P, 77-24-P and 77-26-P)

Operator is liable under 1969 Act for independent contractor's violations pursuant to commission's decision in Republic Steel Corporation.

69: 3(d)
INDEPENDENT CONTRACTORS - Operator's Liability under 1969 Act, 5.108

248
CONSOLIDATION COAL COMPANY
VINC 77-122-P
July 6, 1978
ALJ - Final
Unbound

30 CFR 77.1605(m)
69: 109(a)(1)

177
CONSOLIDATION COAL COMPANY
VINC 77-132-P
January 22, 1980
RC
1/80 p3*

(Old Docket Number IBMA No. 78-3)

Dismissal of operator's motion, after request for hearing, to have administrative law judge accept payment of proposed penalty and dismiss case is affirmed, since amount of penalty is triable issue and judge may determine amount of penalty on de novo basis.

69: 109(a)(3) 30 CFR 100.7(d) 43 CFR 4.454(c)
REVIEW COMMISSION PROCEDURE - Offer to Pay Penalty - Triable Issue - De Novo Penalty Determination, 35.22 35.08

796
CONSOLIDATION COAL COMPANY
VINC 78-417
December 1, 1978
ALJ - Appealed
Unbound*

(Reference Docket Number VINC 79-25-P)

Imminent danger existed where there was loose, unconsolidated rock on highwall which had been rendered even more by several days of rain, and testimony showed that rocks were large in size and fell off highwall at extremely fast rate.

Both requirements of 30 CFR §77.1001 were violated where loose, large-sized rocks which fell frequently were not stripped for safe distance from highwall and loose material was not sloped to angle of repose as evidenced by fact that it was not stable.

Operator's violation of 30 CFR §77.1001 was extremely serious since it contributed to fatal accident, although gravity of violation must be weighed in light of decedent's unpredictable action in opening bulldozer door while checking tail clearance.

Failure of operator to instruct decedent not to go between highwall and stripper in light of unfavorable weather conditions, narrowness of pit, and well-known unstable nature of highwall contributed to fatality and constituted gross negligence.

77: 107(a)
IMMINENT DANGER - Loose Unconsolidated Rock - Unfavorable Weather Conditions - Frequently Falling Large Rocks, 24.50
30 CFR 77.1001
GROUND CONTROL - Stripping Loose Material - Angle of Repose, 77.1001
30 CFR 77.1001
PENALTIES - Gravity of Violation - Decedent's Contributory Actions, 26.50
PENALTIES - Negligence of Operator - Failure to Instruct Worker, 26.30

407
CONSOLIDATION COAL COMPANY
VINC 78-417
January 9, 1979
RC - Denying Petition
Unbound

77: 107(a)
30 CFR 77.1001

604
CONSOLIDATION COAL COMPANY
WEVA 79-11
September 17, 1979
ALJ - Final
9/79 p1343

PS

589
CONSOLIDATION COAL COMPANY
WEVA 79-35
August 14, 1979
ALJ - Final
8/79 p1053

PS

152
CONSOLIDATION COAL COMPANY
WEVA 79-54-R
October 12, 1979
ALJ - Final
10/79 p1601*

Coal dust accumulation two to 14 inches in depth extending 950 feet on floor, belt, equipment and power cables for period of seven days constituted unwarrantable failure of operator to comply with 30 CFR §75.400.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Coal Dust on Equipment & Power Cables - Seven-Day Accumulation - Unwarrantable Failure, 75.0400 24.20

1090
CONSOLIDATION COAL COMPANY
WEVA 79-115-R
August 4, 1980
ALJ - Interloc Review Denied
Unbound

1201
CONSOLIDATION COAL COMPANY
WEVA 79-115-R
August 4, 1980
RC - Denying Interloc. Rev.
Unbound

1275
CONSOLIDATION COAL COMPANY
WEVA 79-115-R
November 28, 1980
ALJ - Final
11/80 p3426

77: 104(d)(2)
30 CFR 75.400

1123
CONSOLIDATION COAL COMPANY
WEVA 79-120-R
July 31, 1980
ALJ - Final
7/80 p2021*

Mine Safety and Health Administration's clerical mistake in describing safeguard notice on which it bases operator's violation of 30 CFR 75.1403 did not deprive operator of adequate notice of violation if operator can present no evidence of prejudice to preparation of its case, and operator's search of its records would have notified it of discrepancy and would have prompted it to request clarification.

Safeguard notice which refers only to keeping tracks free from excess water cannot be construed as encompassing both mud and excess water because safeguard notice must be strictly construed; operator must comply with requirements of de facto mandatory safety standard promulgated without protection or opportunity to submit comments, and therefore notice should be written precisely to avoid question as to performance required of operator.

Withdrawal order issued for failure to abate violation of safeguard notice which prohibits accumulation of excess water along tracks must be vacated when evidence established that, on day order was issued, there was no water over rails, and although there was mud along rail which could be deposited onto rails, this was not actual violation because safeguard notice applied only to accumulation of water.

30 CFR 75.1403
CITATIONS - Modification - Clerical Error - Adequate Notice to Operator, 24.07
30 CFR 75.1403
CITATIONS - Safeguard Notices - Specificity - Strict Construction, 24.05 75.1403
30 CFR 75.1403
WITHDRAWAL ORDERS - Failure to Abate - Safeguard Notice, 24.10

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162
CONSOLIDATION COAL COMPANY
WEVA 79-171-R
October 19, 1979
ALJ - Final
10/79 p1638*

Withdrawal order issued under §104(b) of 1977 Act for failure to correct improper gauge between rails of main haulage track is vacated since, in view of substantial work done to abate condition and fact that work was continuing, period of time for abatement should have been further extended.

30 CFR 75.1403 77: 104(b)
WITHDRAWAL ORDERS - Failure to Abate - Improper Gauge between Haulage Track Rails - Abatement Effort, 24.10 75.1403 28.10

767
CONSOLIDATION COAL COMPANY
WEVA 79-351-R
February 19, 1980
ALJ - Final
2/80 p479*

Voluntary correction by operator of "sag" of concrete floor supporting elevated conveyor belt prior to issuance of withdrawal order does not preclude finding of imminent danger because of overall poor condition of structure, excessive vibration during operation, and failure of voluntary repairs to provide adequate support.

77: 107(a)
IMMINENT DANGER - Withdrawal Order - Voluntary Abatement, 24.50

724
CONSOLIDATION COAL COMPANY
WEVA 79-354
March 19, 1980
ALJ - Final
3/80 p725

77: 110(a)
30 CFR 75.400

807
CONSOLIDATION COAL COMPANY
WEVA 79-362
April 11, 1980
ALJ - Final
4/80 p866

30 CFR 75.509

906
CONSOLIDATION COAL COMPANY
WEVA 79-440-R
April 28, 1980
ALJ - Final
4/80 p965*

(Reference Docket Number WEVA 80-183)

Repairing hose of continuous miner machine while trailing cable attached to machine is plugged into power center violates 30 CFR 75.1725 which provides that repairs shall not be performed on machinery until power is off because even though mechanic making repairs had cut circuit breaker to machine, machine is not de-energized until trailing cable is disconnected from power center.

30 CFR 75.1725
MECHANICAL EQUIP-Repair of Machine While Plugged Into Power Center-Cutting Circuit Breaker-De-energizing Machine, 75.1725

935
CONSOLIDATION COAL COMPANY
WEVA 80-13-R
May 30, 1980
ALJ - Final
5/80 p1173*

Issuance of withdrawal order pursuant to §104(c) of Federal Mine Safety and Health Act of 1977 is justified when operator is cited for violation of its roof control plan and specified time for abatement is two hours and 41 minutes and, six days after issuance of citation, condition has not been adequately abated.

77: 104(e) 30 CFR 75.200
WITHDRAWAL ORDER - Violation of Roof Control Plan - Failure to Abate, 24.10 75.0200

1242
CONSOLIDATION COAL COMPANY
WEVA 80-110-R
November 5, 1980
ALJ - Final
11/80 p3244

30 CFR 75.400

1156
CONSOLIDATION COAL COMPANY
WEVA 80-116-R
October 7, 1980
ALJ - Review Denied/Appealed
10/80 p2862*

(Reference 4th Cir. Number 80-1862)

Inspector's issuance of withdrawal order under Section 104(b) of 1977 Act for failure to abate violation of approved roof control plan and his refusal to extend abatement period is proper where he determined that only 15 roof bolts had been installed to correct 150 wide spaced bolts and that abatement work had been performed only during one shift after issuance of citation.

Operator's contest of citation issued under Section 104(d)(1) of 1977 Act for operator's unwarrantable failure to comply with its roof control plan is justified where evidence showed that 350 wide spaced bolts had been installed for at least six months and operator knew or should have known of condition and possibility of roof fall injury was neither remote nor speculative.

Inspector erred in issuing withdrawal order under Section 104(b) of 1977 Act for failure to abate violation of roof control plan and in refusing to extend abatement period where operator introduced documentary evidence to show that it had installed more than 400 roof bolts in cited area before termination of abatement period and inspector had cited only 350 roof bolts in violation of plan.

77: 104(b)
  WITHDRAWAL ORDERS - Failure to Abate - Violation of Roof Control Plan - Refusal to Extend Abatement Period, 24.10 28.10 75.0200
77: 104(d)(1)
  CITATIONS - Unwarrantable Failure to Comply - Violation of Roof Control Plan, 24.20 24.15 75.0200
77: 104(b)
  WITHDRAWAL ORDERS - Failure to Abate - Violation of Roof Control Plan - Documentary Evidence, 24.10 75.0200

91

803
CONSOLIDATION COAL COMPANY
WEVA 80-145
April 2, 1980
ALJ - Final
4/80 p796

PA

998
CONSOLIDATION COAL COMPANY
WEVA 80-224-R
September 19, 1980
ALJ - Final
9/80 p2647*

Operator violates 30 CFR 75.400 which prohibits accumulation of combustible materials, where credible testimony establishes that there were five separate piles of coal dust and loose coal, a distance of 2,000 feet along conveyor belts covered with coal dust and float coal dust which was black in color, and distance of 1,000 feet along conveyor belts covered with coal dust and float coal which was gray in color, because amount of spillage constitutes accumulation under cited standard.

Violation of accumulation standard 30 CFR 75.400 justifies issuance of citation under Section 104(d)(1) of 1977 Act because of operator's unwarrantable failure to comply with mandatory standard where evidence establishes that coal accumulations were present for more than one working shift before citation was issued showing that operator knew or should have known of accumulation and failed to exercise reasonable care to abate condition and where testimony established that accumulations created potential hazard of fire and explosion.

30 CFR 75.400
  COMBUSTIBLE MATERIALS - Coal Accumulations - Amount and Extent - Spillage, 75.0400
30 CFR 75.400 77: 104(d)(1)
  CITATIONS - Unwarrantable Failure to Comply - Coal Accumulations - Present for, 24.20 75.0400

854
CONSOLIDATION COAL COMPANY
WEVA 80-333-R
June 12, 1980
ALJ - Ruling - Review Granted
6/80 p1403

77: 103(g)

1192
CONSOLIDATION COAL COMPANY
WEVA 80-352
October 30, 1980
ALJ - Final
10/80 p3184

PS

1175
CONSOLIDATION COAL COMPANY
WEVA 80-457-D
October 20, 1980
ALJ - Final
10/80 p3037

77: 105(c)

1194
CONSOLIDATION COAL COMPANY
WEVA 80-648-D
October 30, 1980
ALJ - Final
10/80 p3189

77: 105(c)

1190
CONTINENTAL OIL COMPANY
DENV 79-554-PM
October 29, 1980
ALJ - Final
10/80 p3165*

Operator who contracted out to independent contractor part of mining operation, reserving measure of control over broader aspects of operation but not over day-to-day mining operations, is subject to assessment to civil penalty when roof fall, due to lack of support at mouth of drift, results in death of employee of contractor.

DEFENSES - Operator's Liability - Violation by Independent Contractor, 37.20
PA

1151
COUNCIL OF THE SOUTHERN MOUNTAINS
KENT 80-222-D
October 3, 1980
ALJ - Review Denied
10/80 p2829

77: 105(c)(1)
30 CFR 48.3

1233
COUNCIL OF THE SOUTHERN MOUNTAINS, INC.
KENT 80-222-D
November 12, 1980
RC
11/80 p3216*

Judge's disposition, which found operator in violation of discrimination clause and ordered reimbursement for attorneys' fees and expenses but did not specify dollar amount of award, was not order which finally disposed of proceeding and did not initiate running of statutory review period; accordingly, petitions for discretionary review are dismissed as premature.

77: 113(d)(1)
COMMISSION PROCEDURE - Premature Petition for Review - Finality of Judge's Disposition, 35.24

5
COWIN & COMPANY, INC.
BARB 74-259
April 11, 1979
RC - on Remand
4/79 p20*

(Old Docket Number IBMA No. 75.57)

Independent construction contractor performing work on mine premises under contract with mine owner is "operator" of mine withir meaning of Federal Coal Mine Health and Safety Act of 1969.

Failure of applicant seeking review of imminent danger withdrawal order to substantiate claim that "emergency condition" excused it from compliance with standards requires affirmance of withdrawal order.

69: 3(d)
INDEPENDENT CONTRACTORS - Coverage under 1969 Act, 5.108
77: 113(d)(2)(A)(iii)
DEFENSES - "Emergency" - Failure of Proof, 37.01 24.50

274
COWIN & COMPANY, INC.
HOPE 76-210-P
September 14, 1978
ALJ - Review Denied & Appealed
Unbound

30 CFR 77.1903(a)
30 CFR 77.1903(b)
30 CFR 77.1903(c)
30 CFR 77.1905(b)
30 CFR 77.1906(a)

273
COWIN & COMPANY, INC.
HOPE 76-210-P
October 25, 1978
RC - Appealed
Unbound

30 CFR 77.1903(a)
30 CFR 77.1903(b)
30 CFR 77.1903(c)
30 CFR 77.1905(b)
30 CFR 77.1906(a)

155
COWIN & COMPANY, INC.
HOPE 76-210-P
December 28, 1979
4th Cir Court (78-1825)
N/A*

Secretary of Labor's action under §109(c) of 1969 Act against independent contractor is remanded to Federal Mine Safety and Health Review Commission for Safety and Health Review Commission for amendment of civil charges since independent contractors cannot be held liable under §109(c) as "agents" of coal mine operator, but are "operators" subject to liability under §109(a) of Act.

69: 109(c) 69: 109(a)
INDEPENDENT CONTRACTORS - Agent of Operator - Liability under 1969 Act, 5.108 5.109

1080
COWIN & COMPANY, INC.
HOPE 76-210-P
March 27, 1980
ALJ - Review Denied
Unbound

981
COWIN & COMPANY, INC.
HOPE 76-210-P
September 8, 1980
ALJ - Review Granted
9/80 p2543

69: 109(c)
69: 109(a)(1)
30 CFR 77.1903(b)

249
CRAVAT COAL COMPANY
VINC 78-28-P
July 7, 1978
ALJ - Final
Unbound

30 CFR 77.205(b)
30 CFR 77.205(a)
43 CFR 4.540

1107
CRD COAL COMPANY, INC.
PIKE 79-58-P
August 14, 1980
ALJ - Final
8/80 p2247*

Proposed total penalties of $1,532 for seven violations of mandatory health and safety standards have no deterrent effect on operator which is no longer in coal business and which does not contemplate reentry into coal business; since operator is unable to pay penalties, penalty of $1.00 is assessed for each violation.

PA
PENALTIES - Effect on Business - Financial Condition, 26.40

550
CREEKVIEW COAL CORPORATION
BARB 78-583-P
June 14, 1979
ALJ - Final
6/79 p537

PS

954
CRESCENT COAL COMPANY
PIKE 77-71
August 8, 1979
ALJ - Review Granted
8/80 p2137

77: 113(d)(2)(A)(i)

899
CRESCENT COAL COMPANY
PIKE 77-71
June 23, 1980
RC
6/80 p1202*

Judge's dismissal of miner's discrimination complaint as sanction for miner's failure to respond to prehearing order was error because of remedial purpose of 1969 Act and because of miner's difficulty in obtaining counsel.

69: 110(b)(2)
REVIEW COMM PROCEDURE-Failure to Respond to Prehearing Order-Dismissal of Discrimination Complaint as Sanction, 35.16 35.22 30.01

60
CUT SLATE, INC.
WILK 79-13-PM
July 25, 1979
RC - Reverse & Remand
7/79 p796*

Rule 7 of Review Commission's Interim Rules of Procedure (Rule 51 of permanent rules) regarding location of hearing is interpreted to apply to all instances where parties are required personally to convene, including prehearing conferences.

Review Commission judge abused his discretion by holding prehearing conference at location objected to by mine operator as requiring 900 miles' round trip, and by issuing default order against operator for failing to appear at conference.

29 CFR 2700.7 (I)
REVIEW COMMISSION PROCEDURE - Location of Prehearing Conference - Applicability of Rule, 35.16 35.18
29 CFR 2700.7 (I)
REVIEW COMMISSION PROCEDURE - Location of Prehearing Conference - Judge's Discretion - Default Order, 35.16 35.22

95

587
CUT SLATE, INC.
WILK 79-13-PM
August 13, 1979
ALJ - On Remand
8/79 p1039

PA

662
CYPRUS INDUSTRIAL MINERALS COMPANY
DENV 78-558-M
August 3, 1978
ALJ - Review Granted in Part
12/79 p2069

77: 3(h)(1)
77: 107(a)
30 CFR 57.3-2

1200
CYPRUS INDUSTRIAL MINERALS COMPANY
DENV 78-558-M
January 25, 1980
RC - Granting Review Part
Unbound

1332
CYPRUS INDUSTRIAL MINERALS COMPANY
DENV 78-558-M
September 3, 1980
9th Cir/Remanding
N/A

(Reference 9th Cir. Number 80-7090 and 81-7062)

1330
CYPRUS INDUSTRIAL MINERALS COMPANY
DENV 78-588-M
August 3, 1978
ALJ - Rev. Denied/Appealed
12/79 p2069

(Reference 9th Cir. Number CA-80-7090)

218
D & M CONTRACTORS
DENV 77-99-P
May 15, 1978
ALJ - Final
Unbound

69: 109(a)
69: 104(b)

1110
D K T COAL COMPANY
KENT 79-348
August 14, 1980
ALJ - Final
8/80 p2251*

Where operator places order for canopies to be installed on equipment before citation alleging violation of 30 CFR 75.1710-1 is written, and canopies are installed on tractor and scoop before operation of abandoned mine is resumed, operator makes good faith effort to achieve rapid compliance with standard.

Operator, by beginning to operate in high seam of coal without installation of canopies on scoop and tractor in violation of 30 CFR 75.1710-1, demonstrates high degree of negligence, because operator was aware that canopies were required at new location and operator knew he could not get canopies at that time even though he put them on order.

30 CFR 77.1710-1
  PENALTIES - Good Faith - Rapid Compliance, 26.60 75.1710
30 CFR 75.1710-1
  PENALTIES - Negligence of Operator - High Seam of Coal, 26.30 75.1710

229
DAN BRANCH MINING COMPANY, INC.
BARB 77-256-P
June 9, 1978
ALJ - Final
Unbound

30 CFR 75.1100-2
30 CFR 75.316
30 CFR 75.307
30 CFR 75.1712-6
30 CFR 75.400
30 CFR 75.1722
30 CFR 75.1704
30 CFR 75.200
30 CFR 75.523
30 CFR 75.402

1294
DAN NEVILLE
CENT 80-180-M
December 11, 1980
ALJ - Final
12/80 p3586*

South Dakota mine operator who uses equipment manufactured in other states and sells product to company located in Minnesota has effect on interstate commerce and is subject to provisions of Federal Mine Safety and Health Act even though most of crushed product from mine is used in roads in state of South Dakota.

Snow fence approximately three and one-half to four feet high is not adequate guard for drive unit of crusher approximately five feet high since equipment could be contacted by and cause injury to people.

77: 3(h)(1)
  COVERAGE OF ACT - Effect on Interstate Commerce, 5.102
30 CFR 56.14-1
  MECHANICAL EQUIPMENT - Exposed Moving Machine Parts - Guards, 56.14

754
DAVID CABRERA, INC.
SE 79-2-M
February 8, 1980
ALJ - Final
2/80 p338* or 343

(Reference Docket Number SE 79-53-M)

Machinery removed from service by withdrawal order issued by MSHA inspector cannot be used until operator obtains proper permission to do so and continued use of machinery in defiance of order justifies assessment of $1,800 penalty.

77: 107(a)
ABATEMENT - Withdrawal Order - Continued Use of Machinery - Penalty, 28.01 26.01

694
DAVID CABRERA, INC.
SE 79-3-M
February 8, 1980
ALJ - Final
2/80 p348

PS

396
DAVID PASULA
PITT 78-458
March 5, 1979
ALJ - Review Granted
3/79 p69

30 CFR 70.510
77: 105(c)

418
DAVID PASULA
PITT 78-458
March 29, 1979
ALJ - Stay Order
3/79 p177

18
DAVID PASULA
PITT 78-458
April 11, 1979
RC - Vacating Stay
4/79 p25*

Commission judge lacks authority to stay effective date of his decision once it is issued or to consider motion for reconsideration of such decision.

77: 113(d) 29 CFR 2700.54 (I) 29 CFR 2700.55 (I)
REVIEW COMMISSION PROCEDURE - Judges' Authority - Stay of Judge's Decision, 35.22

1143
DAVID PASULA
PITT 78-458
October 14, 1980
RC - Appealed
10/80 p2786*

(Reference 3rd Cir. Number 80-2600)

Right to refuse work in some situations is activity protected by discrimination clause, Section 105(c)(1), of Federal Mine Safety and Health Act of 1977, even though this right is not set forth in plain language of section, because legislative history and provisions in Act encouraging miners to participate in its enforcement clearly indicate that Congress intended that Section 105(c)(1) be construed to accord this right to miners.

Miner's refusal to continue to operate continuous mining machine until noise level test was made because he was suffering from effects of loud noise level of machine is activity protected by discrimination clause, Section 105(c)(1), of Federal Mine Safety and Health Act of 1977, because his suffering was actual, not speculative, and his view that he was exposed to unhealthful and excessive noise levels was reasonable and was supported by objective evidence.

Statutory right to refuse work under discrimination clause, Section 105(c)(1), of Federal Mine Safety and Health Act of 1977 is broader than right set forth in union contract which permits refusal to work in only "abnormal imminent danger" and Act does not limit miner's refusal to work only to such conditions.

While according weight to findings of arbitrators may aid Commission's judges in finding facts, arbitral findings, even those addressing issues perfectly congruent with those before judge, are not controlling upon judge; accordingly, judge did not err in according little or no weight to arbitral findings.

Where miner's discharge was motivated by both unlawful reason (miner's refusal to operate machine) and by lawful reason (miner's refusal to permit anyone else to operate machine), miner is still entitled to remedy under Act, if evidence shows that miner would not have been fired in any event for unprotected activities alone.

77: 105(c)(1)
DISCRIMINATION - Protected Activity - Right to Refuse Work - Congressional Intent, 30.055 5.08
30 CFR 56.5-50 77: 105(c)(1)
DISCRIMINATION - Protected Activity - Refusal to Work Continous Mining Machine - Excessive Noise Level, 30.055
77: 105(c)(1)
DISCRIMINATION - Right to Refuse Work - Statutory v. Contractual, 30.055
COMMISSIN PROCEDURE - Findings of Arbitrators - Weight to be Accorded by Judge, 30.70 35.22
DISCRIMINATION - Discharge for Protected Activity - Refusal to Work - Lawful and Unlawful Motivations, 30.10

738
DAVIS COAL COMPANY
HOPE 78-627-P
March 7, 1980
RC
3/80 p619*

(Reference Docket Numbers HOPE 78-672-P, 78-687-P, 78-696-P, 79-112-P, 79-195-P, 79-233-P, 79-234-P, WEVA 79-25, and 79-130-133)

Judges' decisions approving settlements in which operator was ordered to pay ten percent of originally proposed penalties are affirmed because motions to approve settlements set forth information relevant to criteria under §110(i) of 1977 Act and discussed detrimental effect that originally proposed penalties would have on operator's ability to remain in business.

77: 110(i)
PENALTIES - Effect on Financial Condition - 90 Perc[illegible]
Reduction, 26.40

955
DAVIS COAL COMPANY
HOPE 79-195-P
September 21, 1979
ALJ - Review Granted
Unbound

620
DAVIS COAL COMPANY
WEVA 79-25
September 26, 1979
ALJ - Final
9/79 p1419

PS

956
DAVIS COAL COMPANY
WEVA 79-130
December 13, 1979
ALJ - Review Granted
Unbound

676
DAVIS COAL COMPANY
WEVA 79-358
January 10, 1980
ALJ - Final
1/80 p18

PS

1179
DAVIS COAL COMPANY
WEVA 80-309
October 21, 1980
ALJ - Final
10/80 p3053*

Evidence that 30 of 35 water sprays on continuous mining machine were clogged and that trickle of water was coming out of other sprays establishes violation of 30 CFR 75.316 despite mine operator's argument that machine would have burned up under such conditions, since water could have leaked out after passing through machine's cooling system.

Financial statements showing unprofitable operation of coal mine should not be given great weight in penalty assessment when operator was able to increase his and his wife's salaries and to secure financial assistance from banks, and company held valuable coal leases.

30 CFR 75.316
VENTILATION - Dust Control - Clogged Water Sprays, 75.0316
77: 110(i)
PENALTY ASSESSMENT - Effect on Business - Financial Condition, 26.40
30 CFR 77.200

649
DAY MINES, INC.
DENV 79-330-PM
November 15, 1979
ALJ - Final
11/79 p1869

30 CFR 57.5-50(b)

1096
DAY MINES, INC.
DENV 79-424-PM
July 2, 1980
ALJ - Final
7/80 p1720*

(Reference Docket Number DENV 79-425-PM

Loose roof in area which is used for switching cars and storing equipment violates 30 CFR §57.3-22, which requires that all working places and travelways be periodically inspected for loose roof and scaled as necessary, because miners are required to make frequent trips into area.

Operator violates 30 CFR §57.6-177, pertaining to misfire disposal procedures, when blasting agent and blasting wires are left in fired hole, as presence of these materials indicates that all of explosive did not detonate which constitutes a misfire.

Citation for violation of 30 CFR §57.6-1, which requires detonators to be stored in magazines, must be vacated where inspector claimed that two miners, who were blasting face, left box of detonators in roadway until preparation of blasting holes had been completed, because evidence established that detonators were left lying next to rib, not in roadway, and that procedure used by blasters was reasonable.

30 CFR 57.3-22
ROOF CONTROL - Inspection and Scaling of Loose Roof in Travelways, 57.03
30 CFR 57.6-177
EXPLOSIVES - Misfire Disposal Procedure - Remains of Blasting Agent, 57.06
30 CFR 57.6-1
EXPLOSIVES - Storage of Detonators in Magazine - Placement of Detonators near Rib During Blasting Preparation, 57.06

644
DEBY COAL COMPANY
BARB 78-674-P
October 30, 1979
ALJ - Final
10/79 p1763

PS

1158
DERBY GRANITE, INC.
WILK 79-24-PM
October 9, 1980
ALJ - Final
10/80 p2900

PA

1145
DESKINS BRANCH COAL COMPANY
PIKE 76-66
October 23, 1980
RC
10/80 p2803*

While in non-union, lacking established procedures for reporting complaints, miner's notification to any mine official brings miner within protection of Section 110(b) of 1969 Act, record does not establish that discharged miners made safety complaint to foreman as alleged and judge's findings in favor of foreman and supervisor are upheld; accordingly, discharged miners failed to invoke protections of Section 110(b).

69: 110(b)
DISCRIMINATION - Alleged Discharge for Safety Complaint - Credibility, 30.053

536
DESKINS BRANCH COAL COMPANY
PIKE 78-329-P
August 16, 1978
ALJ - Motion to Remand to A.O.
5/79 p401

77: 301(c)(2)
30 CFR 100.3(i)

57
DESKINS BRANCH COAL COMPANY
PIKE 78-329-P
March 14, 1979
ALJ - Final
5/79 p384*

(Reference Docket Numbers 78-343-P and 78-351-P)

Secretary's motion for extension of time to comply with pretrial order was not properly served where motion was mailed only to office of deceased attorney when Secretary had reason to know of attorney's demise through filings of other attorneys on behalf of same party.

Interim Rule 29 CFR §2700.26(d)(1) and (2) does not forclose consideration of prejudice suffered by respondent mine operator in evaluating propriety of dismissal of Secretary of Labor's petition for civil penalty assessment for failure of prosecution.

Failure timely and substantively to comply with judge's pretrial order requiring exchange of witness and exhibit lists and testimonial synopsis and filing of stipulations resulting in prejudice to respondent mine operator amounts to failure of prosecution under Interim Rule 2700.26(d) and warrants dismissal of Secretary's petition for assessment of civil penalty with prejudice.

REVIEW COMMISSION PROCEDURE - Motion for Extension - Adequacy of Service, 35.12
29 CFR 2700.26(d)(1) (I) 29 CFR 2700.26(d)(2) (I)
REVIEW COMMISSION PROCEDURE - Motion for Dismissal - Failure to Prosecute - Prejudice, 35.16
29 CFR 2700.26(d) (I)
REVIEW COMMISSION PROCEDURE - Motion for Dismissal - Failure to Prosecute - Failure to Comply with Pretrial Order, 35.16

1260
DKT COAL COMPANY
KENT 79-349
November 20, 1980
ALJ - Final
10/80 p3336*

Operator violates requirements of 30 CFR 75.523-1 that self-propelled electric face equipment shall be provided with device that will quickly deenergize the tramming motors of the equipment in event of emergency, when emergency deenergizing device on canopy-equipped roof-bolting machine, which is self-propelled face equipment within meaning of standard, is not in order.

Operator violates requirements of 30 CFR 75.316 because wing curtain was 30 feet back from face where coal was being mined and approved plan required wing curtain or other approved device to be installed and maintained within 10 feet of point of deepest penetration where coal is being cut, drilled, mined, or loaded.

Operator violates requirements of 30 CFR 75.1722 when blower motor belts on Lee Norris roof bolter were not properly guarded, because blower motor and belts were located inside six- to 12-inch opening in structures of machine and opening was located near seat of operator's side.

Operator violates requirements of 30 CFR 75.400 (accumulation of combustible materials) when loose coal extends for distance of 600 feet along side of conveyor belt, is six inches deep, and is 42 inches wide and float coal dust accumulation along conveyor is 600 feet long, 20 feet wide, and one-quarter-inch deep.

30 CFR 75.523-1
ELECTRICAL EQUIPMENT - De-energization of Electric Face Equipment, 75.0523
30 CFR 75.316
VENTILATION - Approved System - Dust and Methane Control Plan, 75.0316
30 CFR 75.1722
MECHANICAL EQUIPMENT - Guards - Exposed Moving Machine Parts, 75.1722
30 CFR 75.400
COMBUSTIBLE MATERIALS - Loose Coal and Coal Dust - Accumulation on Conveyor Belt, 75.0400

1327
DOUBLE "Q", INC.
78-1153
March 25, 1980
6th Cir Court Appealed
N/A*

(Reference U.S. Supreme Court Number 80-57)

District court decision holding that the Federal Coal Mine Health and Safety Act of 1969 does not provide for de novo trial on factual findings of violations and only permits de novo review of amount of civil penalties is affirmed.

PENALTY COLLECTION - De Novo Trial - Issue of Liability, 205.60

1225
DOUBLE "Q", INC.
80-57
November 3, 1980
US SUPREME COURT
N/A*

The petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is denied.

736
DRAVO LIME COMPANY
IBMA 77-M-1
October 28, 1977
ALJ - Final
3/80 p771

30 CFR 57.14-1

640
DRY LAKE COAL COMPANY, INC.
BARB 78-617-P
October 18, 1979
ALJ - Final
10/79 p1635

PS

621
DUNLAP COAL COMPANY
BARB 78-675-P
September 26, 1979
ALJ - Final
9/79 p1437

PS

532
DUQUESNE LIGHT COMPANY
PITT 78-439-P
May 10, 1979
ALJ - Final
5/79 p366 or 373

30 CFR 75.1710
30 CFR 75.400

338
DUQUESNE LIGHT COMPANY
PITT 79-32
January 19, 1979
ALJ - Final
Unbound

77: 104(d)
77: 105

713
DUVAL CORPORATION
WEST 79-194-M
March 4, 1980
ALJ - Rev Granted/Dismissed
3/80 p641

30 CFR 55.12-71

801
DUVAL CORPORATION
WEST 79-194-M
April 14, 1980
RC - Appealed
4/80 p781

(Reference 9th Cir. Number 80-7213)

29 CFR 2700.5(d)

1349
DUVAL CORPORATION
WEST 79-194-M
May 12, 1980
RC - Denying Reconsideration
Unpublished

(Appealed: See 9th Circuit No. 80-7213)

1103
DUVAL CORPORATION
WEST 79-196-M
July 29, 1980
ALJ - Final
7/80 p1976*

Operator's use of permanently spliced cable which lacked bonded outer jacket constitutes violation of 30 CFR 55.12-13, because evidence established that outer jacket was loose and fact that five cables bound by cable were individually wrapped and sealed does not relieve operator of its duty under standard to make sure its power cables are well bonded.

Citation for violation of 30 CFR 55.14-1, for failure to adequately guard pinch point between belt drive and pulley on back-up water pump, is vacated because operator established that pump was guarded adequately by its location and design and that pinch point could not be contacted except intentionally.

Citation for violation of 30 CFR 55.14-45, for allowing employee to weld on teeth of shovel bucket without using curtain to protect others from harm of light flashes, is vacated because welding operation was shielded adequately on three sides by shovel bucket and on forth side by welder.

30 CFR 55.12-13
ELECTRICAL HAZARDS - Permanently Spliced Cable - Use Without Bonded Outer Jacket, 55.12
30 CFR 55.14-1
MECHANICAL EQUIPMENT - Pinch Point on Back-Up Water Pump - Failure to Guard - Protective Location, 55.14
30 CFR 55.14-45
MECHANICAL EQUIPMENT - Welding on Shovel Bucket - Failure to Shield With Curtain - Hazard of Light Flashes, 55.14

546
DWIGHT IRBY CONSTRUCTION COMPANY
DENV 79-68-PM
June 7, 1979
ALJ - Final
6/79 p524

865
E & J COAL CORPORATION
HOPE 79-3-P
June 17, 1980
ALJ - Final
6/80 p1463

77: 110(i)

482
E LAWSON COAL COMPANY, INC.
PIKE 78-12-P
June 15, 1978
ALJ - Final
Unbound

69: 109(a)

833
E. BRUCE NOLAND
VA 79-102-DM
April 25, 1980
ALJ - Final
4/80 p954*

Employee's filing of health and safety complaint against operator is protected activity under Section 105(c) of Federal Mine Safety and Health Act of 1977 and finding of discrimination is warranted when this protected activity is in any manner contributing factor in employee's discharge.

Finding of discriminatory discharge requires employer to take affirmative action to abate violation and such action is not limited to rehiring or reinstatement of employee to his former position, but may also include consequential or special damages which are necessary to remove harmful effects of discriminatory conduct.

Employee discharged for making health and safety complaint is entitled to consequential damages for discriminatory discharge which may include net income lost during period of discharge less actual earnings employee made during that period and may also include payment for equipment which employee was forced to sell at a loss because employment was terminated.

77: 105(c)
DISCRIMINATION - Protected Activity - Safety Conplaints to Operator - Motivation for Discharge, 30.053
77: 105(c)
DISCRIMINATION - Remedies - Consequential or Special Damages, 30.50
77: 105(c)
DISCRIMIATION - Consequential Damages - Lost Income - Lost Equipment, 30.50

1112
EASTERN ASSOCIATED COAL CORPORATION
HOPE 75-699
September 2, 1980
RC
9/80 p2467*

(Reference IBMA No. 76-98)

Secretary of Interior had jurisdiction to review withdrawal order issued pursuant to Section 103(f) of 1969 Act and Federal Mine Safety and Health Review Commission succeeded to Interior Secretary's power to adjudicate Section 103(f) case pending before Secretary on effective date of 1977 act.

Withdrawal order issued under Section 103(f) of 1969 Act, after cable hook became loose and shuttle car pinned miner to rib, was valid because Section 103(f) order may be used to ensure that accident scene remains undisturbed if accident investigation is necessary to determine cause of accident and means to prevent recurrence.

Requirements in modification of Section 103(f) order issued by inspector under 1969 Act, which were conditions precedent to termination of order, were valid even though requirements imposed duties upon operator that were not imposed by mandatory health or safety standard, because Section 103(f) permits inspector to issue orders appropriate to insure safety of any person in mine and requires that operator obtain inspector's approval of plan to return affected areas of mine to normal.

69: 103(f)
COMMISSION JURISDICTION-Rev. Sec. 103 Orders Under 1969 Act-Transfer Secretary of Interior's Powers to Comm., 35.02 22.30
69: 103(f)
WITHDRAWAL ORDERS - Section 103(f) Order - 1969 Act - Issued to Preserve Evidence, 22.30
69: 103(f)
WITHDRAWAL ORDERS - Section 103(f) Order - 1969 Act - Modification by Inspector, 22.30 24.07

376
EASTERN ASSOCIATED COAL CORPORATION
HOPE 76-140
June 22, 1978
ALJ - Final
Unbound*

Withdrawal order which is issued for failure to abate violation of 30 CFR §70.100 (respirable dust), must be vacated when in setting reasonable time for abatement, inspector fails to consider limited short- term hazard to miners, difficulty in achieving abatement, difficulty in obtaining equipment, and time required to abate after receiving results of post-notice sampling.

30 CFR 70.100(b)
WITHDRAWAL ORDER - Reasonable Time for Abatement - Consideration of Specific Factors, 28.10 24.10 70.0100
69: 202(a)
30 CFR 70.100(b)
30 CFR 70.220(a)(3)
30 CFR 70.211

1010
EASTERN ASSOCIATED COAL CORPORATION
HOPE 76-289
January 27, 1977
ALJ - Reviewed & Remanded
9/80 p2704

(Attachment to Decision at 9/80 p2701)

69: 103(f)

1092
EASTERN ASSOCIATED COAL CORPORATION
HOPE 76-289
September 2, 1980
RC - Vacate & Remand
9/80 p2474

1009
EASTERN ASSOCIATED COAL CORPORATION
HOPE 76-289
September 26, 1980
ALJ - On Remand
9/80 p2071*

Modification by judge of withdrawal order issued under Section 103(f) of 1969 Act changing termination time to seven hours earlier is appropriate where delay in termination time was not caused by safety concern and preserving scene of minor methane explosion was not crucial to determination of accident's cause, after tests were conducted which showed little chance of recurrence.

69: 103(f)
WITHDRAWAL ORDERS - Section 103(F) Order - 1969 Act - Modification by Judge, 22.30 24.07

380
EASTERN ASSOCIATED COAL CORPORATION
HOPE 77-23
April 14, 1978
ALJ - Final
Unbound

30 CFR 75.400
69: 104(b)

209
EASTERN ASSOCIATED COAL CORPORATION
HOPE 77-36
April 14, 1978
ALJ - Final
Unbound

69: 104(a)
30 CFR 75.200

379
EASTERN ASSOCIATED COAL CORPORATION
HOPE 77-183
April 24, 1978
ALJ - Final
Unbound*

Test for imminent danger under Section 3(j) of 1969 Act to justify issuance of withdrawal order under Section 104(a) of 1969 Act is objective: whether a reasonable man with inspector's education and experience would conclude that facts indicate an impending accident or disaster, likely to occur at any moment, but not necessarily immediately.

Discovery of methane in area 3 feet by 4 feet by 8 inches in amounts of 2.4 volume per centum when tested under the boom of 7 shuttle cars discharging coal on belt conveyor tail unit where there was a source of ignition, and ignition is sufficient to burn shuttle car operator sitting beside methane accumulation and result in mine disaster, consitutes an imminent danger per se under Section 3(j) and 302(h)(2) of 1969 Act; accordingly, withdrawal order issued under Section 104 of Act is affirmed.

69: 104(a)
IMMINENT DANGER - Sectin 104(a) - Objective Test, 24.50
69: 3(j) 69:104(a)
IMMINENT DANGER - Section 104(a) - Accumulation of Methane, 24.50 75.0308

220
EASTERN ASSOCIATED COAL CORPORATION
HOPE 78-8
May 23, 1978
ALJ - Final
Unbound

69: 103(i)
30 CFR 75.400
69: 104(c)(2)

561
EASTERN ASSOCIATED COAL CORPORATION
HOPE 78-77-P
April 30, 1979
ALJ - Final
6/79 p775

30 CFR 75.316
30 CFR 75.400
30 CFR 75.1306

425
EASTERN ASSOCIATED COAL CORPORATION
HOPE 78-108
January 3, 1979
ALJ - Final
Unbound

223
EASTERN ASSOCIATED COAL CORPORATION
HOPE 78-109
May 30, 1978
ALJ - Final
Unbound

69: 104(c)(2)
30 CFR 75.200

470
EASTERN ASSOCIATED COAL CORPORATION
HOPE 78-208-P
July 11, 1978
ALJ - Final
Unbound

PA

267
EASTERN ASSOCIATED COAL CORPORATION
HOPE 78-215-P
August 31, 1978
ALJ - Final
Unbound

30 CFR 75.301
30 CFR 75.200

250
EASTERN ASSOCIATED COAL CORPORATION
HOPE 77-262-P
July 7, 1978
ALJ - Final
Unbound

30 CFR 75.305

286
EASTERN ASSOCIATED COAL CORPORATION
HOPE 78-306-P
September 27, 1978
ALJ - Final
Unbound

69: 109(a)(1)
30 CFR 75.301
30 CFR 75.503
30 CFR 75.400
30 CFR 75.512

73
EASTERN ASSOCIATED COAL CORPORATION
HOPE 78-606-P
May 31, 1979
ALJ - Final
5/79 p434*

(Reference Docket Number 78-610-P)

Regulatory scheme contemplates treating two alleged infractions of 30 CFR §75.200 for existence of crosscut corner widths exceeding roof control plan specifications and for absence of additional rib supports, as separate violations, even though both are cited in same notice of violation and increased hazard of roof fall is attributable to concurrence of both infractions, since topics are addressed in separate mandatory safety standards.

MSHA establishes violation of 30 CFR §75.200 for existence of crosscut corners measuring 22 to 24 feet in width when roof control plan required 20-foot width, where operator did not object at hearing or in post-hearing brief to inspector's logical method of measuring widths and where inspector failed to state width at each intersection measured and operator did not mention such failure in its brief, but operator was aware of importance of precise measurements and is therefore deemed to have knowingly waived any objection to MSHA's failure to establish specific width for each intersection.

Violation of 30 CFR §75.200 is not established by absence of additonal rib supports required by roof control plan where mining height is 72 inches or more, since inspector failed to connect 72-inch height with specific missing rib support and operator's testimony indicates that 30 to 40 percent of area had mining height of less than 72 inches and therefore did not require additional support.

It is not necessary to determine whether coal had been produced before proper methane test for purposes of finding 30 CFR §75.307 violation, since fact that continuous miner, piece of electrically energized equipment, was operating inby last open crosscut prior to taking methane readings with approved detector is sufficient to establish violation of 30 CFR §75.307.

30 CFR 75.200
ROOF SUPPORT - Roof Control Plans - Rib Supports - Opening Widths - Underground Coal Mines - Number of Violations, 75.0200 24.09
30 CFR 75.200
ROOF SUPPORT - Roof Control Plans - Opening Widths - Measurement Procedures - Waiver of Objection, 75.0200 35.08
30 CFR 75.200
ROOF SUPPORT - Roof Control Plans - Rib Supports - Measurement of Mining Height - Underground Coal Mine, 75.0200
30 CFR 75.307
VENTILATION - Methane Examiniations - Underground Coal Mines, 75.0307

552
EASTERN ASSOCIATED COAL CORPORATION
HOPE 78-607-P
June 21, 1979
ALJ - Final
6/79 p602

30 CFR 75.200

120
EASTERN ASSOCIATED COAL CORPORATION
MORG 75-393
October 23, 1979
RC
10/79 p1473

(Reference Old Docket Number IBMA No. 76-55)

Tagging jitney with inoperable parking brake as out of service was not adequate abatement of violation of 30 CFR §75.1403; operator should have abated violation by repairing jitney or rendering it inoperable.

Lack of evidence that defective jitney could not have been rendered inoperable within period for abatement specified in notice of violation requires finding that such abatement period was reasonable and supports issuance of withdrawal order for failure to abate.

30 CFR 75.1403
ABATEMENT - What Constitutes - Jitney with Inoperable Brake, 28.05 75.1403
69: 104(b)
ABATEMENT - Period for Abatement - Withdrawal Order, 28.10 24.10

106
EASTERN ASSOCIATED COAL CORPORATION
MORG 77-74
July 23, 1979
ALJ - Final
7/79 p919*

Dump truck's braking system constituted imminent danger under §104(a) of Federal Coal Mine Health and Safety Act of 1969 as evidenced by facts that air pressure dropped from 120 to 70 pounds per square inch when truck operator applied brakes, inspectors heard hissing noises when brakes were tested and found brakes could not hold properly, and brake diaphragm was cracked.

69: 104(a)
IMMINENT DANGER - Dump Truck - Cracked Brake Diaphram, 24.50

567
EASTERN ASSOCIATED COAL CORPORATION
MORG 77-74
July 25, 1979
ALJ - Amendment
7/79 p927

247
EASTERN ASSOCIATED COAL CORPORATION
MORG 78-35
July 6, 1978
ALJ - Final
Unbound

69: 104(a)
30 CFR 75.200

514
EASTERN ASSOCIATED COAL CORPORATION
MORG 78-314-P
April 13, 1979
ALJ - Final
4/79 p229

PA

315
EASTERN ASSOCIATED COAL CORPORATION
MORG 78-385-P
December 4, 1978
ALJ - Review Denied
Unbound

30 CFR 75.517

316
EASTERN ASSOCIATED COAL CORPORATION
MORG 78-385-P
December 4, 1978
RC
Unbound

30 CFR 75.517

216
EASTERN ASSOCIATED COAL CORPORATION
PITT 77-58
May 11, 1978
ALJ - Final
Unbound

69: 104(c)(1)
30 CFR 75.301
30 CFR 75.200
30 CFR 75.400
30 CFR 75.601

957
EASTERN ASSOCIATED COAL CORPORATION
WEVA 79-117-R
June 6, 1979
ALJ - Review Granted
Unbound

958
EASTERN ASSOCIATED COAL CORPORATION
WEVA 79-117-R
June 22, 1979
ALJ
Unbound

1139
EASTERN ASSOCIATED COAL CORPORATION
WEVA 79-117-R
October 9, 1980
RC - Reversing & Remanding
10/80 p2774*

Judge erred in dismissing without prejudice operator's notice of contest to terminated Section 104(d)(1) withdrawal order, because judge's order to show cause why contest should not be stayed until associated penalty contest arose mentioned only stay and not dismissal; additionally, as matter of Commission policy, stay, rather than dismissal without prejudice, is appropriate procedural device for postponing adjudication of contest of withdrawal order, when postponment is warranted.

Stay of proceeding, in which operator is contesting terminated Section 104(d)(1) withdrawal order, until associated penalty proceeding arises is inappropriate because operator remains subject to sanctions of additional withdrawal orders under Sections 104(d) and (e), and judge erred in requiring operator to show "urgent need" in order to receive prompt hearing.

77: 104(d)(1)
COMMISSION PROCEDURE - Notice of Contest of Terminated Withdrawal Order - Judge's Dismissal Without Prejudice, 35.22 24.01
77: 104(d)(1)
COMMISSION PROCEDURE - Notice of Contest of Terminiated Withdrawal Order - Appropriateness of Stay of Proceeding, 35.22 24.01

839
EASTERN ASSOCIATED COAL CORPORATION
WEVA 80-120-R
May 20, 1980
ALJ - Final
6/80 p1242

30 CFR 100.5
30 CFR 100.6

1236
EASTERN ASSOCIATED COAL CORPORATION
WEVA 80-137-D
September 29, 1980
ALJ - Review Denied
9/80 Unbound*

Laid-off employee who had no dealings with Federal Mine Safety and Health Administration may not resort to relief found in discrimination clause of 1977 Act when complaint is based solely on allegation that new employees were hired and complainant was never recalled; Commission jurisdiction in discrimination cases is limited to situations described in Section 105(c)(1).

77: 105(c)(1)
DISCRIMINATION - Action Prohibited by Discrimination Clause - Refusal to Rehire Employee, 30.08

1274
EASTERN ASSOCIATED COAL CORPORATION
WEVA 80-473
November 26, 1980
ALJ - Review Granted
11/80 p3422

77: 103(k)
77: 111

290
EASTERN COAL CORPORATION
PIKE 78-388-P
October 6, 1978
ALJ - Final
Unbound

30 CFR 75.301
PS

646
EASTERN COAL CORPORATION
PIKE 79-42-P
November 2, 1979
ALJ - Final
11/79 p1837

30 CFR 75.400
30 CFR 75.518
30 CFR 75.601
30 CFR 75.701-3
30 CFR 75.301
30 CFR 75.200

542
EASTOVER MINING COMPANY
BARB 79-198-P
June 4, 1979
ALJ - Final
6/79 p490

30 CFR 75.200
30 CFR 75.202

307
EASTOVER MINING COMPANY
NORT 78-54-P
November 8, 1978
ALJ - Final
Unbound

30 CFR 75.301-4
30 CFR 75.523
30 CFR 75.200
30 CFR 75.507
30 CFR 75.202

728
EASTOVER MINING COMPANY
VA 80-31
March 19, 1980
ALJ - Final
3/80 p736

77: 103(f)

1012
EASTOVER MINING COMPANY
VA 80-60-D
September 26, 1980
ALJ - Final
9/80 p2715*

Miner's complaint that he was illegally discharged by operator, in violation of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, must be dismissed when evidence established that miner was in fact never discharged but voluntarily left his job and never returned.

77: 105(c)(1)
DISCRIMINATION - Discharge for Excercising Protected Right - Evidence, 30.051

1305
EASTOVER MINING COMPANY
VA 80-84
December 17, 1980
ALJ -- Review Granted
12/80 p3673

30 CFR 75.507

879
EATON SAND & GRAVEL COMPANY
PIKE 79-119-PM
June 25, 1980
ALJ - Final
6/80 p1618*

Employee working on machine located near highway violates 30 CFR §56.3-5, which prohibits working near or under dangerous banks, and operator is liable for violation even though employee was instructed not to work on machine until it was pulled away from wall, because operator's liability is not conditioned upon fault.

30 CFR 56.3-5
GROUND CONTROL - Work Near Dangerous Banks Prohibited - Operator's liability for Employee's Negligence, 56.03 37.25

658
EL PASO ROCK QUARRIES, INC.
DENV 79-139-PM
December 14, 1979
ALJ - Review Granted
12/79 p2046

30 CFR 56.9-22
30 CFR 56.15-4
30 CFR 56.9-40(a)
30 CFR 56.9-22
30 CFR 56.3-12
30 CFR 56.9-87
30 CFR 56.9-71
30 CFR 56.4-23
30 CFR 56.11-2
30 CFR 56.15-5
30 CFR 56.14-1
30 CFR 56.11-1

659
EL PASO ROCK QUARRIES, INC.
DENV 79-139-PM
December 14, 1979
ALJ ~ Review Granted
12/79 p2046

30 CFR 56.3-5
30 CFR 56.11-12
30 CFR 56.12-67
30 CFR 56.12-68
30 CFR 56.12-8

1176
ELDEAN GRAVEL COMPANY
LAKE 80-279-M
October 20, 1980
ALJ - Final
10/80 p3039

PS

1266
ELDON & SANDRA WAIT
WEST 79-171-M
November 24, 1980
ALJ - Final
11/80 p3395

252
ELKAY MINING COMPANY
HOPE 78-172-P
July 18, 1978
ALJ - Final
Unbound

PS

83
ELKINS ENERGY CORPORATION
NORT 78-382
June 19, 1979
ALJ - Final
6/79 p558*

Conclusions that miner made safety complaints to superintendent and the evidence does not support operator's reason for discharging miner warrant finding that miner was discharged for having engaged in protected activity.

Evidence that miner fell asleep on job and failed to perform methane test and prepare preshift examination as required justifies discharge of miner.

77: 105(c)(1)
DISCRIMINATION - Safety Complaints to Operator - Temporary Discharge - Failure to Rehire, 30.053
77: 105(c)(1)
DISCRIMINATION - Grounds for Discharge - Falling Asleep on Job - Failure to Perform Safety Duties, 30.10

260
ELM SHOALS COAL COMPANY
BARB 78-101-P
August 22, 1978
ALJ - Final
Unbound

29 CFR 2700.15 (I)

878
ELY FUEL COMPANY
KENT 79-4
June 25, 1980
ALJ - Final
6/80 p1614

PA

284
EMPIRE ENERGY CORPORATION
DENV 78-14-P
September 22, 1978
ALJ - Final
Unbound

30 CFR 75.400

484
EMPIRE ENERGY CORPORATION
DENV 78-442-P
December 8, 1978
ALJ - Final
Unbound*

Although information in MSHA's 1978 Inspector's Manual for underground coal mines does not constitute mandatory standards, to the extent that manual references are not contrary to 1969 Act or implementing regulations, there is nothing illegal or arbitary in an inspector applying those guidelines to his interpretation of meaning or application of any given standard, so long as his interpretation does not expand on or is not totally contradictory to intent and clear meaning of standard cited.

Spliced conductor wires in trailing cable to water pump that have been tied in square knots or twisted together are not made in workmanlike manner and mechanically joined as required by 30 CFR 75.603; intent of standard and 1978 MSHA Inspector's Manual for underground coal mines is to insure that all such temporary splices are uniformly made by means of mechanical devices such as rings and connectors.

Secretary's argument that violation of 30 CFR 75.603 was of utmost seriousness since two miners carrying energized water pump could be electrocuted if splice in trailing cable to water pump opened and if conductors were to pull apart and circuit breaker failed to trip, is rejected since evidence establishes that pump was permissible, square-knotted splice was secure and well insulated so as to exclude water, there was no real danger of cable or splice being run over since no equipment was operating at face area, ground fault system was operational, circuit breaker system had been previously checked and there was no evidence that it was not

operational, and there is no credible evidence that cable was otherwise damaged.

69: 109(a)(1)
STANDARDS - Administrative Interpretation - Inspector's Manual, 40.30
30 CFR 75.603
ELECTRICAL HAZARDS - Temporary Splicing - Square Knots, 75.0603 40.30
30 CFR 75.603
ELECTRICAL HAZARDS - Temporary Splicing - Gravity of Violation, 75.0603 26.50

382
EMPIRE ENERGY CORPORATION
WILK 79-4-PM
February 13, 1979
ALJ - Final
Unbound

77: 110(k)
PA

608
ENERGY DEVELOPMENT CORPORATION
PIKE 79-15-P
September 18, 1979
ALJ - Final
9/79 p1352

PS

360
ENERGY FUELS CORPORATION
DENV 78-410
November 1, 1978
ALJ - Review Granted
Unbound

77: 105(a)
77: 105(d)

8
ENERGY FUELS CORPORATION
DENV 78-410
May 1, 1979
RC - Reverse & Remand
5/79 p299*

Federal Mine Safety and Health Review Commission has jurisdiction under Federal Mine Safety and Health Act of 1977 to review, prior to proposal of penalties by Secretary of Labor, citation containing special findings of unwarrantable failure under Section 104(b)(1) of Act, even though alleged violations have been abated by mine operator.

77: 104(b)(1)
REVIEW COMMISSION JURISDICTION - Reviewability of Citation, 35.02 24.20

502
ENERGY FUELS CORPORATION
DENV 78-421
April 4, 1979
ALJ - Final
4/79 p89

PA

675
ENERGY FUELS CORPORATION
DENV 79-27-P
January 9, 1980
ALJ - Final
1/80 p15

PS

451
ENERGY FUELS NUCLEAR, INC.
DENV 78-434-M
December 4, 1978
ALJ - Final
Unbound*

Core drilling operations at previously abandoned uranium mine, sole objective of which to reach potential uranium ore body, are akin to normal mine development work and constitute mining activities which Congress intended to regulate under 1977 Act.

Although no uranium has been extracted from previously abandoned uranium mine where operator conducts core drilling operations, intent of 1977 Act is to be broadly construed to apply to all of nation's mines as class of activities which affect commerce; accordingly, operations fall within class of activities covered by 1977 Act.

Personal logs of persons underground maintained by operator's resident geologist and mine foreman and personal wallet containing positive means of identification carried by each person underground do not constitute accurate check-in and check-out system required by 30 CFR 57.11-58.

Inspector has discretion to extend time for compliance with 30 CFR 57.11-58 beyond two-day abatement period and additional six days where inspector did not finally advise operator as to specific requirements for acceptable check-in and check-out system until with- drawal order was issued and second inspector believed violation was technical and would not contribute to mine accident or hazard; accordingly, withdrawal order issued under section 104(b) of 1977 Act for failure to abate violation within time fixed is vacated.

Violation of 30 CFR 57.11-52(a) is established where refuge chamber consists of wood materials not made fire-resistant and only method of rendering wood fire-resistant is to apply fire-retardant paint, gunite, or other similar material; alternatives such as wetness of wood chamber bulkhead and wood inside chamber or remote possibilities of fire are not suitable substitute.

Violation of 30 CFR 57.3-22 is established where timber sets at surface area portal area taking weight, one post is missing, and others are leaning, cracked, or rotten, since terms "working place" and "travel-way" in standard apply to mine portal are, notwithstanding fact that 30 CFR 57.3-22 appears in "underground only" portion of standards.

Inspector should have granted extension of about one hour to abate violation when work was almost completed, initial abatement period of one day had proved unrealistic and extension of ten days had been granted, during which snowfalls limited access to worksite.

77: 104(b)
COVERAGE OF ACT - Mines - Exploration v. Development, 5.106
77: 3(h)(1)
COVERAGE OF ACT - Commerce, 5.102
30 CFR 57.11-58
ESCAPEWAYS - Check-In and Check-Out Systems, 57.11
77: 104(b)
ABATEMENT PERIOD - Extensions, 28.10 57.11
30 CFR 57.11-52(a)
ESCAPEWAYS - Refuge Areas - Fire-Resistant Construction, 57.11
GROUND CONTROL - Underground Mines - Travelway - Portal Area, 57.03
ABATEMENT PERIOD - Extension - Abatement Near Completion, 28.10
30 CFR 57.3-22
77: 4

295
ERIE MINING COMPANY
DENV 78-302-M
November 1, 1978
ALJ - Final
Unbound

77: 105(a)
77: 105(d)

1013
ERIE MINING COMPANY
DENV 79-23-M
September 29, 1980
ALJ - Final
9/80 p2717

29 CFR 2700.11(c) (I)
29 CFR 2700.18(b)
30 CFR 55.12-14

1057
EVANSVILLE MATERIALS, INC.
LAKE 80-195-M
August 20, 1980
ALJ - Review Denied
8/80 p2321*

Evidence of substantial air leak in braking system of loader and drop in air pressure while brakes are applied with engine in operation renders brakes defective within meaning of 30 CFR 56.9-2; accordingly, operator's contention that loader could be stopped by dropping and dragging bucket or using transmission is rejected as defense since principal means of stopping loader was by activating brake pedal.

Substantial air leak in braking system of loader constitutes nonserious violation of 30 CFR 56.9-2 where loader is used intermittently, in limited area, at speeds not exceeding 5 mph, no one is in danger of being struck by loader, operator is satisfied he can control loader, and there is no evidence that leak is due to defective mechanical parts.

30 CFR 56.9-2
HAULAGE - Defective Brakes, 56.09
30 CFR 56.9-2
PENALTIES - Gravity of Violation - Loss of Air Pressure, 26.50 56.09

476
EVERETT PROPST & ROBERT STEMPLE
MORG 78-28-P
August 31, 1978
ALJ - Review Granted
Unbound

69: 109(c)

655
EXCEL MINERAL COMPANY
WEST 79-173-M
December 5, 1979
ALJ - Final
12/79 p2001

30 CFR 55.9-37
30 CFR 56.14-6
30 CFR 55.11-2
30 CFR 55.9-7
30 CFR 55.14-1
30 CFR 55.11-27
30 CFR 55.9-22

1273
F & G SAND & GRAVEL CO, INC.
YORK 80-46-M
November 25, 1980
ALJ - Final
11/80 p3421

29 CFR 2700.8(b)

685
F M C CORPORATION
WEST 79-419-RM
January 29, 1980
ALJ - Final
1/80 p225

30 CFR 57.4-29

712
F M V COAL CORPORATION
HOPE 77-128
February 26, 1980
ALJ - Final
2/80 p575*

Issuance of withdrawal order pursuant to section 104(c)(1) of 1969 Act is justified when operator fails to comply with requirements of 30 CFR §75.1100-2(b) by failing to provide sufficient outlet valves for waterlines, and miners who are idled by withdrawal order are entitled to receive full compensation for lost time.

69: 110(a) 30 CFR 75.1100-2(b)
COMPENSATION - Miners Idled by Withdrawal Orders - Validity of Orders, 20.13 75.1100
69: 110(b)(3)

838
FARRELL-COPPER MINING COMPANY
CENT 79-70
May 15, 1980
ALJ - Final
6/80 p1239

PS

721
FAULKNER COAL & LEASING
KENT 79-146
February 12, 1980
ALJ - Final
3/80 p680

77: 104(b)
30 CFR 77.1713

1148
FEDERAL AMERICAN PARTNERS
WEST 80-197-M
September 19, 1980
ALJ - Final
10/80 p2822

1271
FEDERAL AMERICAN PARTNERS
WEST 80-219-RM
November 25, 1980
ALJ - Final
11/80 p3416

30 CFR 55.7-5

1251
FILLMORE INDUSTRIES, INC.
YORK 80-66-M
November 14, 1980
ALJ - Final
11/80 p3297

PS

40
FIRE CREEK COAL COMPANY OF TENNESSEE
BARB 79-3-P
April 5, 1979
ALJ - Final
4/79 p149*

(Reference Docket Numbers 79-4-P, 79-57-P, 79-58-P and 79-59-P)

Finding of gross negligence is not justified where mine operator admitted responsibility, with hired manager, for safe operation of mine, and that he should have been aware of cited conditions, and where manager is no longer employed by mine and mine operations have improved.

Reduction of initial assessment of $8,830 to $2,000 is justified because mine operator is small and in serious financial difficulties, initial assessments in the aggregrate would effectively put company out of business, and operator voluntarily produced company financial records.

77: 110(i)
PENALTIES - Negligence of Operator, 26.30
77: 110(i)
PENALTIES - Effect on Business - Financial Conditions, 26.40

945
FIRE CREEK COAL COMPANY OF TENNESSEE
BARB 79-264-P
July 2, 1979
ALJ - Final
7/79 p801

29 CFR 2700.49 (I)
PA

1259
FIRE CREEK COAL COMPANY OF TENNESSEE
SE 79-24
November 19, 1980
ALJ - Final
11/80 p3333

PS

618
FLAT TOP MINING, INC.
PIKE 79-29-P
September 26, 1979
ALJ - Final
9/79 p1410

29 CFR 2700.63(a)
30 CFR 77.1302(a)

416
FLORIDA CRUSHED STONE COMPANY
BARB 78-648-PM
March 28, 1979
ALJ - Final
3/79 p171

30 CFR 56.9-87

931
FMC CORPORATION
WEST 79-167-M
May 14, 1980
ALJ - Final
5/80 p1098*

Roof bolter parked with boom elevated does not violate 30 CFR §57.9-32 which provides: "Dippers, buckets, scraper blades, and similar movable parts shall be secured or lowered to the ground when not in use" as regulation applies only to equipment used to move earth, and roof bolter's function is to drill holes and set roof bolts.

Dismissal of citation for violation of 30 CFR §57.21-78 for failure to maintain machinery in permissible condition is justified when there is substantial evidence that operator had tagged equipment out of service prior to inspection, and only evidence that machinery had been used while in impermissible condition was inspector's discovery of warm electrical boxes on machinery.

30 CFR 57.9-32
HAULAGE - Loading, Hauling, Dumping - Securing Movable Parts - Applicability to Roof Bolter, 57.09
30 CFR 57.21-78
MECHANICAL EQUIPMENT - Use of Equipment - Permissible Condition - Evidence, 57.21

921
FMC CORPORATION
WEST 79-168-M
June 3, 1980
ALJ - Final
6/80 p1315*

Operator violates 30 CFR §57.9-37 when service truck is left resting on steep grade, unattended, without brakes being set, because regulation requires that mobile equipment which is used for loading and hauling not be left unattended unless brakes are set, and evidence establishes that truck is used for hauling.

Return idler rollers, which provide support system for conveyor belt, are considered "exposed moving machine parts," so that operator violates 30 CFR §57.14-1, which requires guarding of exposed moving machine parts, when idler rollers are unguarded and there is danger of injury to persons who would come into contact with exposed parts.

Operator violates 30 CFR §57.14-1, which requires guarding of exposed moving machine parts, when unguarded takeup pulley has pinch point and is located near handrails of work platform, because, in normal course of work duties on platform, employee may come into contact with moving parts and may be injured.

Dismissal of citation for violation of 30 CFR §57.9-2, which requires that equipment defects affecting safety be corrected before equipment is used, is justified when evidence established that defective equipment was not used after inspection, but was sold.

30 CFR 57.9-37
HAULAGE - Unattended Service Truck Brakes Not Set - Applicability of Standard, 57.09
30 CFR 57.14-1
MECHANICAL EQUIPMENT - Guarding Exposed Moving Parts - Applicability to Idler Rollers, 57.14
30 CFR 57.14-1
MECHANICAL EQUIPMENT - Guarding Exposed Moving Parts - Takeup Pulley - Location Near Work Platform, 57.14
30 CFR 57.9-2
HAULAGE - Correction of Equipment Defects - Use of Equipment after Inspection, 57.09

191
FOWLER & CHANEY COAL COMPANY
78-0174-B
February 19, 1980
DISTRICT COURT
N/A*

Operator may obtain in district court de novo review of issue of liability as to violations of 1969 Act because Act does not provide for review by court of appeals of Secretary of Interior's findings as to whether violation occurred.

69: 109(a)(4)
COURT JURISDICTION - De Novo Review - Liability - 1969 Act, 201.02 201.08

922
FRANK J. BOUGH
VINC 79-247-P
June 5, 1980
ALJ - Final
6/80 p1331*

(Reference Docket Number Lake 79-91)

Miner violates provision of 30 CFR §75.1702 when he is found smoking cigarette in underground mine, and miner's employer also violates regulation because it is employer's duty to insure that no person entering underground area of mine carries smoking materials.

30 CFR 75.1702
SMOKING - Miner's Violation - Employer's Liability, 75.1702

107
FREEMAN UNITED COAL MINING COMPANY
VINC 78-49-P
July 26, 1979
ALJ - Final
7/79 p936*

Evidence that accumulations had been piled along ribs for 3700 feet, coupled with fact that only one belt shoveler was working on accumulations when inspector walked belt, indicate that operator was not securing effective removal of accumulation and accordingly violated 30 CFR §75.400.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Removal of Accumulation - Reasonable Time - Underground Coal Mines, 75.0400

58
FREEMAN UNITED COAL MINING COMPANY
VINC 78-394-P
May 31, 1979
ALJ - Final
5/79 p454*

Good bonding of permanent splices in trailing cables does not exist, in violation of 30 CFR §75.604(c), where outer cable jacket and outer splice jacket were not fused together with glue-type substance because outer jacket was misapplied and attempt to remedy defect was made with plastic electrical tape.

Operator demonstrates ordinary negligence where preshift examiner or section foreman should have observed trailing cable splice that was split open, in violation of 30 CFR §75.604, and should have taken corrective action, since inspector's withdrawal order citing defective splice was issued at 9:20 a.m., relatively early in shift, and either preshift or onshift examination should have revealed improper splice, and actual or constructive knowledge by such personnel is imputed to operator.

30 CFR 75.604(c)
ELECTRICAL HAZARDS - Trailing Cables - Permanent Splicing - Underground Coal Mines, 75.0604
30 CFR 75.604
PENALTIES - Negligence of Operator - Permanent Splicing of Trailing Cables, 26.30

1333
FREEMAN UNITED COAL MINING COMPANY
VINC 78-395-P
August 30, 1979
ALJ - Review Granted
8/79 p1235

30 CFR 75.301-4
30 CFR 75.400

144
FREEMAN UNITED COAL MINING COMPANY
VINC 78-395-P
December 12, 1979
RC - Reverse & Remand
12/79 p1961

732
FREEMAN UNITED COAL MINING COMPANY
VINC 78-395-P
March 28, 1980
ALJ - Decision on Remand
3/80 p748*

Proof of existence of accumulation of coal dust and loose coal in active workings of mine by itself warranted finding of violation of 30 CFR §75.400 without showing that operator was aware of accumulation and did remove it within reasonable time in accordance with Review Commission's decision in Old Ben Coal Company, 1 MSHC 2241 (1979).

Failure to prove that accumulation of combustible materials existed for two shifts prior to cleanup precludes finding of gross negligence on part of operator; preshift examiner's knowledge of accumulation and presence of foreman in area warrants finding of ordinary negligence.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Coal Accumulations - Active Workings - No Additional Requirements, 75.0400
PENALTIES - Gross Negligence - Knowledge of Accumulation - Ordinary Negligence, 26.30 75.0400

761
FREEPORT KAOLIN COMPANY
BARB 79-219-PM
January 30, 1980
ALJ - Final
1/80 p233*

(Reference Docket Numbers BARB 79-280-PM, 79-281-PM and 79-282-PM)

Requirement under 30 CFR §55.12-16 that electrical equipment be de-energized before work is done on equipment applies to "electrical equipment" and "mechanical" work done on it and does not make distinction between "electrical" and "mechanical" equipment.

Failure to de-energize drum dryer while cleaning door of screw conveyor was violation of 30 CFR §55.12-16, even though 30 CFR §55.14-29 permits necessary machinery motion, since machine motion was not required for door-cleaning or changing of blades.

Missing glass and bent indicator needle on pressure gauges on oxygen and acetylene cylinders did not constitute violation of 30 CFR §55.14-26 since cylinders have safety device that opens and vents gases should pressure exceed permissible levels, making gauges unnecessary for safety standpoint.

Failure to provide cover on screw conveyor constituted violation of 30 CFR §55.14-1 even though location of conveyor was not in normal operating area because employee would be in area for maintenance purposes and could entangle arm in open screw conveyor.

Operator's lack of knowledge of broken conduit at damper valve of dryer is defense to violation of 30 CFR §55.12-30 because standard only requires that dangerous conditions found by operator be corrected before electrical equipment is energized.

Failure to provide guards on lights along walkway and within striking distance of persons wearing hardhats constituted violation of requirement of 30 CFR §55.12-34 that lights that present burn or shock hazard be guarded, even though evidence failed to establish precise number of unguarded bulbs.

Loose guard over metal saw's drive belts constitued violation of 30 CFR §55.14-6 even though equipment was not in operation when inspector observed guard, since inspector's testimony revealed that it is more probable than not that employee was using equipment immediately prior to issuance of citation.

Failure to install guard on end shaft on bin discharge driver of calciner, which presented possibility of injury to maintenance employees, constituted violation of 30 CFR §55.14-1.

Storage of oxygen cylinders with oil and grease cans in large open room that had two ten-by-fifteen foot areas screened off by wire mesh constituted violation of 30 CFR §55.4-18.

Holes four inches wide in floor of walkway on top of storage tank constituted violation of requirement of 30 CFR §55.20-3 that floors be kept as free of holes as practicable, since holes performed no essential function and it was practicable to keep workway free of them.

Absence of enough objective evidence to prove that there was inadequate illumination in warehouse and presence of 14 lights in warehouse precludes finding of violation of 30 CFR §55.17-1, which requires sufficient illumination in work areas.

Fact that inspector's assistant almost fell into hole in warehouse floor and inspector could not see hole clearly establishes inadequate illumination in that one location of warehouse, in violation of 30 CFR §55.17-1.

30 CFR 55.12-16
ELECTRICAL HAZARDS - Drum Dryer - De-energization of Equipment - Electrical/Mechanical Distinction, 55.12 37.01
30 CFR 55.12-16 30 CFR 55.14-29
ELECTRICAL HAZARDS - Drum Dryer - Door-cleaning - Failure to De-energize - Necessary Motion, 55.12 55.14 37.10
30 CFR 55.14-26
MECHANICAL EQUIPMENT - Gas Cylinders - Pressure Gauges - Missing Glass - Safety Device, 55.14
30 CFR 55.14-1
MECHANICAL EQUIPMENT - Unguarded Screw Conveyor - Normal Operating Area - Maintenance, 55.14 37.15
30 CFR 55.12-30
ELECTRICAL HAZARDS - Broken Conduit - Damper Valve of Dryer - Operator's Lack of Knowledge, 55.12 37.05
30 CFR 55.12-34
ELECTRICAL HAZARDS - Lights - Failure to Provide Guards, 55.12
30 CFR 55.14-6
MECHANICAL EQUIPMENT - Loose Guard - Metal Saw's Drive Belts - Probability that Equipment Was in Use, 55.14
30 CFR 55.14-1
MECHANICAL EQUIPMENT - Missing Guard - End Shaft of Calciner - Possibility of Injury, 55.14
30 CFR 55.4-18
FIRE PROTECTION - Oxygen Cylinders - Oil and Grease Cans - Large Open Room, 55.04
30 CFR 55.20-3
HOUSEKEEPING - Holes in Floor - Essential Function - Practicability, 55.20
30 CFR 55.17-1
ILLUMINATION - Warehouse - Objective Evidence - Implication of Adequate Lighting, 55.17
30 CFR 55.17-1
ILLUMINATION - Possible Accident - One Locatiin in Warehouse, 55.17

762
FREEPORT KAOLIN COMPANY
BARB 79-219-PM
January 30, 1980
ALJ - Final
1/80 p233*

Facts that no employees were working in rail load-out area at time of inspection and inspector did not observe either tank car movement or switching activities in area precludes finding of violation of 30 CFR §55.17-1, which requires sufficient illumination in work areas.

Citation for violation of 30 CFR §55.17-1 for inadequate illumination at rail load-out area construed to be walkway is vacated since evidence shows that residual lighting from surrounding buildings provided enough illumination to permit man to walk through area without use of flashlight.

30 CFR 55.17-1
ILLUMINATION - Rail Load-out Area - No Employees or Tank Car Movement in Area, 55.17
30 CFR 55.17-1
ILLUMINATION - Rail Load-out Area - Walkway - Residual Lighting, 55.17

1046
FRONTIER-KEMPER CONSTRUCTORS
CENT 80-59-M
August 8, 1980
ALJ - Final
8/80 p2180

PS

1258
G & M COAL COMPANY
SE 79-128
November 19, 1980
ALJ - Final
11/80 p3327

30 CFR 77.1301

1268
GALLAGHER & BURK, INC.
DENV 79-517-PM
November 25, 1980
ALJ - Final
11/80 p3399*

Operator violates requirement of 30 CFR 56.6-20(e), that magazines be properly grounded, when metal magazines are found resting on ground and are not electrically bonded or grounded because lightning or stray electrical currents could cause explosion in magazines resulting in serious injury or death to employees.

Operator's activity of loading stockpiled rock into commercial trucks is covered by Federal Mine Safety and Health Act of 1977 and mandatory safety standard, 30 CFR 56.9-87, which requires that heavy duty mobile equipment be provided with audible warning devices is violated when manually operated horn on loader does not function.

30 CFR 56.6-20(e)
EXPLOSIVES - Metal Magazines - Grounding Requirement, 56.06
30 CFR 56.9-87
HAULAGE - Mobile Equipment - Defective Audible Warning Device, 56.09 5.106

1007
GARRCO COAL COMPANY, INC.
KENT 79-37
September 26, 1980
ALJ - Final
9/80 p2693

PA
77: 110(i)

394
GATEWAY COAL COMPANY
PITT 78-368-P
March 5, 1979
ALJ - Final
3/79 p61

29 CFR 2700.24 (I)
30 CFR 75.400

669
GENERAL MATERIALS, INC.
DENV 79-315-PM
October 17, 1979
ALJ - Final
12/79 p2150

30 CFR 56.14-1
30 CFR 56.11-12

701
GENERAL PORTLAND, INC.
CENT 79-92-M
February 13, 1980
ALJ - Final
2/80 p437

PS

1006
GENERAL PORTLAND, INC.
DENV 79-277-PM
September 26, 1980
ALJ - Final
9/80 p2688*

Citations charging owner-operator with liability for violation committed by its independent contractor will be affirmed when citations were issued before new regulations which provide for citing contractors directly became effective because there is no evidence that rule was meant to be applied retroactively.

Operator violates 30 CFR 56.15-7 which requires that miners wear goggles when welding, cutting, or working with molten metal when miner is found wearing only safety glasses while using torch to install metal steps, because safety glasses lack side shields and permit sparks to enter and cause injury to eye while goggles cover entire eye and provide superior protection.

Provisions of 30 CFR 56.15-5 require that employees wear safey belts and lines where there is danger of falling, and operator violates standard when employee is found standing on flange of elevator shaft 125 feet above ground without protection of safety belt or line and there were no handrails to prevent his falling.

Citation for violation of 30 CFR 56.9-11 which requires that vehicle cab windows be kept clean and in good condition must be vacated when evidence fails to prove that cited crack in windshield interfered with driver's vision or created some other hazard.

30 CFR 45
INDEPENDENT CONTRACTORS - Operator's Liability for Violations-New Regulations-Retroactive Application, 37.20
30 CFR 56.15-7
PERSONAL PROTECTION - Safety Goggles, 56.15
30 CFR 56.15-5
PERSONAL PROTECTION - Safety Belts and Lines - Danger of Falling, 56.15
30 CFR 56.9-11
HAULAGE - Vehicle Cab Windows - Maintenance in Good Condition - Evidence, 56.09

1212
GEORGE A. HARVEL
DENV 77-40-P
November 16, 1978
ALJ - Denied/Appld/Dismsd
Unbound*

Although fact of violation of mandatory safety standard by corporate coal mine operator is necessary element of proof in establishing violation by agent of corporate operator, such proof is not legally required to be established in separate or consolidated proceeding against operator as condition precedent to instituting proceeding against agent under section 109(c) of Federal Coal Mine Health and Safety Act of 1969.

Dismissal of citation for violation of safety standard is not justified when respondent fails to show that due to Secretary's delay in issuance of citation, respondent lost information which would otherwise have been available to him in defending charges at hearing.

Secretary's failure to provide assessment and settlement scheme for agents of operators who are found liable for safety violations as he does for corporate operators does not constitute unlawful discrimination, because Federal Coal Mine Health and Safety Act of 1969 does not mandate an assessment and settlement scheme for any alleged violations, and there is no authority for precluding enforcement of the 1969 Act against individuals absent settlement procedures.

Mine superintendent can be found liable for violation of 30 CFR 75.400 when an accumulation of coal dust is found in mine, and mine superintendent had inspected air courses immediately preceding issuance of citation, because his inspection should have made him aware of accumulation and its possible dangers.

69: 109(c)
AGENTS OF OPERATORS - Liability for Safety Violations -- Operator Liability as Condition Precedent, 20.80
CITATIONS - Timeliness -- Delay in Issuance - Prejudice to Respondent, 24.04
AGENTS of OPERATORS - Settlement Procedure for Violations -- Discrimination by Secretary, 20.80 35.40
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation of Float Coal Dust -- Knowledge of Violation, 75.0400 37.05

581
GEORGE F PETTINOS, INC.
WILK 79-83-PM
August 7, 1979
ALJ - Final
8/79 p1000

PA

1045
GEORGE F PETTINOS, INC.
YORK 80-81-M
August 8, 1980
ALJ - Final
8/80 p2178

263
GETZ COAL SALES, INC.
VINC 78-321-P
August 24, 1978
ALJ - Final
Unbound

29 CFR 2700.26(e) (I)

1106
GETZ COAL SALES, INC.
VINC 79-60-P
August 7, 1980
ALJ - Final
8/80 p2172*

Failure of operator to appear at hearing on civil penalty assessment pursuant to notice constitutes waiver of right to be heard, but such waiver does not constitute type of default within meaning and intent of Rule 63 and show cause order is not necessary; in view of judge's de novo jurisdiction of proceeding, judge assessed penalty based on hearing record and statutory criteria in Section 110(i) of 1977 Act.

77: 110(i)
COMMISSION PROCEDURE - Hearing - Default - Show Cause Order, 35.18

1285
GEX COLORADO, INC.
WEST 79-28-M
December 2, 1980
ALJ - Final
12/80 p3499*

Operator violates 30 CFR 75.302-4(a) which requires that fans be located and operated so as to avoid any recirculation of air at any time, because air from working face was being recirculated into the air intake entry and thus again travelling to working face.

Operator violates requirement of 30 CFR 75.316 that operator adopt approved ventilation control plan when plan requires that air velocity of 16,000 cfm be maintained and smoke readings indicate air velocity of only 7,025 cfm in last open cross cut.

30 CFR 75.302-4(a)
VENTILATION - Working Face - Recirculated Air, 75.0302
30 CFR 75.316
VENTILATION - Approved Control Plan - Maintenance of Air Velocity, 75.0316

923
GEX COLORADO, INC.
WEST 80-306-R
June 9, 1980
ALJ - Final
6/80 p1347*

Dismissal of unwarrantable failure portion of citation issued for violation of 30 CFR §75.200 is justified when Mine Safety and health Administration fails to provide persuasive evidence that company knew or should have known that continuous miner was being operated under unsupported roof.

30 CFR 75.200
CITATIONS - Unwarrantable Failure Order - Unsubstantial Evidence, 24.20

1284
GEX COLORADO, INC.
WEST 80-327-R
December 2, 1980
ALJ - Final
12/80 p3494*

Federal Mine Safety and Health Review Commission lacks jurisdiction over damage claim brought by operator which incurs abatement expenses in order to comply with improperly issued citation that is subsequently withdrawn.

Operator's request that damages be assessed against government and set off against operator's future civil penalties must be denied since granting set-off would allow operator to violate Federal Mine Safety and Health Act with impunity until any damages were satisfied.

COMMISSION JURISDICTION - Damage Claim - Withdrawn Citation, 35.02
REMEDIES - Set-Off of Damages Against Future Penalties, 35.50

1286
GEX COLORADO, INC.
WEST 80-328-R
December 2, 1980
ALJ - Final
12/80 p3503*

Doctrine of sovereign immunity bars claim for money damages when operator files notice of contest for Secretary of Labor's improper issuance of citation; Commission's authority to order "other appropriate relief" cannot be interpreted as express waiver of sovereign immunity.

Operator's losses, incurred as a result of vacated citation, may not be assessed as damages against government and set-off against future penalties; granting set-off would allow operator to violate Federal Mine Safety and Health Act with impunity until damages were satisfied and thus contravene intention of Act.

COMMISSION JURISDICTION - Damage Claim - Sovereign Immunity, 35.02
REMEDIES - Set-Off of Damages Against Future Penalties, 35.50

562
GILL QUARRIES, INC.
WILK 79-35-PM
July 2, 1979
ALJ - Final
7/79 p805

30 CFR 56.5-50(b)

166
GOLDEN R COAL COMPANY
BARB 79-301-P
November 5, 1979
ALJ - Final
11/79 p1843*

Operator's failure to provide berms or other protective devices on elevated roadway leading to dumping location violated 30 CFR §77.1605(k), rather than 30 CFR §77.1605(1), which requires similar protection devices for dumping locations, since roadway to dumping location is "roadway" under §77.1605(k) and not part of dumping location.

30 CFR 77.1605(k)
HAULAGE - Trucks Using Elevated Raodway - Berms - Dumping Location, 77.1605

777
GOLDEN R COAL COMPANY
KENT 79-124
February 14, 1980
ALJ - Final
2/80 p446*

A preparation plant with three employees is required under 30 CFR §77.1707(a) to have first aid equipment specified in §1707(b).

30 CFR 77.1707(a)
SAFETY PROGRAM - Preparation Plant - First Aid Equipment, 77.1707

1253
GOODE CONTRACTORS
WEVA 80-540
November 17, 1980
ALJ - Final
11/80 p3301

1335
GRAVER
79-1271
October 17, 1979
DISTRICT COURT - Eastern Pa.
N/A*

Court ruled that the slope mine is a coal mine as defined in the Federal Mine Safety and Health Act of 1977 and is subject to safety inspections pursuant to the Act, and enjoined the operator from prohibiting inspectors from entering the mine premises, but later stayed the injunction pending the operator's appeal to the Third Circuit.

1336
GRAVER
79-1271
January 2, 1980
US Appeals - 3rd Cir
N//A*

Appeals court granted Secretary of Labor's motion to vacate the stay entered by the district court and issued an order that permits federal inspectors to inspect a slope mine in Ravine, Pa.

800
GREAT NATIONAL CORPORATION
DENV 77-59-P
February 13, 1979
ALJ - Final
Unbound*

Secretary's failure to prove that any person would be present in immediate vicinity of exposed coupling located between shafts of hydraulic pump and drive motor so that guard would be necessary to prevent injury requires vacation of notice of 30 CFR §77.400(a).

Finding of violation of 30 CFR §77.400(d) cannot be sustained where inspector cannot recall whether there was insufficient guard or no guard at all over conveyor tail pulley and evidence does not establish necessity of guard where hole in shaft was so small that it was almost impossible for person to reach tail pulley.

Legal doctrine of res judicata does not require application to case at hand of prior judgment involving identical standard and similar but not identical machinery.

Secretary has not established violation of 30 CFR §77.409(b) where greasing of sheaves by oiler was only activity performed on unguarded roof of dragline.

30 CFR 77.400(a)
MECHANICAL EQUIPMENT - Guards - Prevention of Injury - Surface Coal Mines, 77.0400 37.15
30 CFR 77.400(d)
MECHANICAL EQUIPMENT - Guards - Prevention of Injury - Surface Coal Mines, 77.0400 37.15
30 CFR 77.409
MECHANICAL EQUIPMENT - Res Judicata - Similar Machinery, 35.60 77.0409
30 CFR 77.409(b)
MECHANICAL EQUIPMENT - Draglines - Guardrails around Platforms - Surface Coal Mines, 77.0409 37.15

666
GREAT NATIONAL CORPORATION
DENV 79-189-P
December 28, 1979
ALJ - Final
12/79 p2126

PA

863
GREGOIRE COALS, INC.
WEVA 80-74
June 16, 1980
ALJ - Final
6/80 p1444

PS

1292
GROVE CRUSHING COMPANY
WEST 79-319-M
December 9, 1980
ALJ - Final
12/80 p3567

30 CFR 56.14-1

842
GROVE STONE & SAND COMPANY
SE 79-57-M
May 29, 1980
ALJ - Final
6/80 p1261*

Dismissal of citation for violation of 30 CFR §56.9-2, which provides that equipment defects affecting safety must be corrected before equipment is used, is justified when evidence supports finding that front-end loader had been checked prior to use and was not found defective, and loader's back-up alarm had become defective from having been splashed by mud while being used.

30 CFR 56.9-2
HAULAGE - Equipment Defect - Inoperable Back-up Alarm - Evidence, 56.09

232
GRUNDY MINING COMPANY, INC.
BARB 78-168-P
June 19, 1978
ALJ - Review Denied & Appealed
Unbound

69: 2(e)
69: 109(a)(1)
77: 110(a)
30 CFR 75.202
30 CFR 75.1725(a)

1221
GRUNDY MINING COMPANY, INC.
BARB 78-168-P
February 21, 1979
RC - Appealed
Unbound

(Reference 6th Cir. Number 78-3424)

69: 2(e)
69: 109(a)(1)
77: 110(a)
30 CFR 75.202
30 CFR 75.1725(a)

231
GRUNDY MINING COMPANY, INC.
BARB 78-168-P
October 25, 1980
RC
Unbound*

Review Commission lacked jurisdiction to grant review of judge's decision on which petition for review had been filed in Federal Appeals Court, since court had exclusive jurisdiction of proceeding at that time under Section 106(a)(1) of 1977 Act.

77: 106(a)(1)
COMMISSION JURISDICTION - Grant of Review - Prior Appeal to Court, 35.02 201.02

1228
GRUNDY MINING COMPANY, INC.
BARB 78-168-P
November 17, 1980
US 6th Cir Court
N/A*

(Reference 6th Cir. Number 78-3424)

Parties appearing before Federal Mine Safety and Health Review Commission and its administrative law judges are entitled to have disputes arising under Act adjudged fairly and on their own merits and, where judge does not afford operator fair opportunity and neutral forum in which to present proper defense and derisively rejects operator's claim that there was no causation between violation and injury which occurred, order is vacated and case is remanded for de novo hearing before different judge.

77: 302(c)
COMMISSION PROCEDURE - Fair Opportunity to Present Defense - Lack of Judicial Restraint, 35.22

670
GRUNDY RED ASH COAL COMPANY
VA 79-0029-P
October 26, 1979
ALJ - Final
12/79 p2158

PS

765
H & H COAL COMPANY
KENT 79-39
February 14, 1980
ALJ - Final
2/80 p443*

Operation of vehicle that had its front, rear and side windows removed, placing driver in danger of being injured by sharp edges of window frames and dust and debris constituted violation of 30 CFR §77.404(a)

30 CFR 77.404(a)
MECHANICAL EQUIPMENT - Operation of Vehicle With No Windows - Sharp Edges - Dust and Debris, 77.0404

1070
H & H COAL COMPANY
KENT 80-134
August 27, 1980
ALJ - Final
8/80 p2428

PS

282
H & H MINING, INC.
PIKE 78-68-P
September 21, 1978
ALJ - Final
Unbound

30 CFR 75.400
77: 110(i)

475
H & L COAL COMPANY, INC.
BARB 78-169-P
August 11, 1978
ALJ - Final
Unbound

PA

1016
H S JACKSON SAND & GRAVEL, INC.
CENT 80-259-M
September 30, 1980
ALJ - Final
9/80 p2743

PA

1053
HALL & ADKINS COAL COMPANY, INC.
KENT 79-43
August 14, 1980
ALJ - Final
8/80 p2255

PS

395
HALLMARK & SON COAL COMPANY
BARB 79-60-P
March 5, 1979
ALJ - Final
3/79 p67

547
HALQUIST STONE COMPANY
VINC 79-118-PM
June 8, 1979
ALJ - Review Granted
6/79 p528

77: 103(a)

1215
HANNA & SOLOMON COAL COMPANY
WEVA 79-464-D
June 27, 1980
ALJ - Final
Unbound*

Operator's failure to explain why it refused to confer with complainant when given opportunity, and its failure to comply with court orders to appear at hearing justifies entering of default judgement against operator in discrimination proceeding, because it can be concluded that by its tactics, operator hoped to frustrate complainant and exhaust him financially so that he would have to withdraw complaint.

77: 105(c)
REVIEW COMMISSION PROCEDURE-Response Initial Filing-Noncompliance Prehearing Order-Failure Appear at Hearing, 35.111 30.01

1051
HARBORLITE CORPORATION
DENV 79-501-PM
August 13, 1980
ALJ - Final
8/80 p2236*

Use of walkway side of conveyor belt only when maintenance is being performed is not determinative of existence of violation of 30 CFR 55.9-7; accordingly, missing portion of guardrail and failure to install stop cord on walkway side of oversize conveyor constitute violation of standard.

Failure to install handrail on west side of elevated platform at second floor of mill constitutes violation of 30 CFR 55.11-27 despite agreement by operator and Secretary that platform was not normal traffic area; since operator's official testified that platform was used occasionally to gain access to screen loader, platform is "working platform" within definition of 30 CFR 55.11-27

Assertions that mill was previously inspected by federal and state inspectors but operator was not cited for failure to guard certain equipment, in violation of 30 CFR 55.14, and that operator requested courtesy visits prior to enactment of 1977 Act but Mine Safety and Health Administration never sent representative to perform inspection, are not a defense to violation of 30 CFR 55.14.

30 CFR 55.9-7
HAULAGE - Conveyor Guardrails - Maintenance Work, 55.09
30 CFR 55.11-27
TRAVELWAYS - Working Platform, 55.11
30 CFR 55.14
MECHANICAL EQUIPMENT - Guards - Prior Inspection as Defense, 55.14 37.01

1008
HARLAN FUEL COMPANY
KENT 80-328-D
September 26, 1980
ALJ - Temporary Reinstatement
9/80 p2697*

Evidence which suggests that miner was discharged because of his refusal to work under unsafe conditions support Secretary's finding that miner's discrimination complaint was not frivolously brought and justifies issuance of temporary reinstatement order; and operator's motion to dismiss reinstatement order is denied because there is some evidence which reasonably tends to show that Secretary's finding was not arbitrarily or capriciously made.

77: 105(c)
DISCRIMINATION - Remedies - Order of Temporary Reinstatement - Secretary's Finding Concerning Complaint, 30.50 35.16

597
HARMAN MINING CORPORATION
NORT 79-14-P
August 30, 1979
ALJ - Final
8/79 p1264

30 CFR 75.1710
30 CFR 75.400
30 CFR 75.200

781
HARMAN MINING CORPORATION
HORT 79-63-P
February 25, 1980
ALJ - Final
2/80 p532*

De-energization device rendered inoperable by wooden wedge driven behind device violated 30 CFR §75.523-1 requirement that self-propelled electric face equipment be equipped with device to quickly de-energize tramming motors in event of emergency, where coal drill was equipped with self-centering hydraulic levers that could not de-energize electrically-driven pump and thus failed to completely de-energize tramming motors.

30 CFR 75.523-1
ELECTRICAL EQUIPMENT - Electric Face Equipment - De-energization, 75.0506

545
HARMAR COAL COMPANY
PITT 79-157-P
June 5, 1979
ALJ - Final
6/79 p520

PS

452
HARMAR COAL COMPANY
PITT 78-342
July 20, 1978
ALJ - Final
Unbound

77: 105(d)

292
HARMAR COAL COMPANY
PITT 78-370-P
October 10, 1978
ALJ - Final
Unbound

PS

211
HARMAR COAL COMPANY
PITT 78-9
April 26, 1978
ALJ - Final
Unbound

69: 104(c)(1)
30 CFR 75.316
30 CFR 75.400

370
HARMAR COAL COMPANY
PITT 78-129
April 4, 1978
ALJ - Errata
Unbound

207
HARMAR COAL COMPANY
PITT 78-129
March 31, 1978
ALJ - Final
Unbound

69: 104(c)(1)
69: 104(c)(2)
30 CFR 75.200

872
HARRISON-PELTRON
WEST 80-121-R
June 24, 1980
ALJ - Final
6/80 p1563*

Imminent danger withdrawal order which was issued because of alleged dangerous roof conditions must be vacated when evidence establishes that, because of mining sequence practiced by operator, operator could abate any dangerous roof condition before death or serious physical harm might reasonably be expected to occur.

77: 107(a)
IMMINENT DANGER - Validity of Order - Dangerous Roof Condition, 24.50

825
HASTIE MINING COMPANY
LAKE 79-191-M
May 29, 1980
ALJ - Review Denied
5/80 p1163*

Operating front-end loader without roll over protection is serious violation of 30 CFR §56.9-88, and large financial burden on company to abate condition is no defense for company's failure to comply with citation and withdrawal order.

30 CFR 56.9-88
HAULAGE - Front-End Loader - Roll Over Protection - Financial Burden, 56.09 37.10

600
HECLA MINING COMPANY
DENV 79-91-PM
September 5, 1979
ALJ - Final
9/79 p1332

PA

167
HECLA MINING COMPANY
DENV 79-199-PM
November 15, 1979
ALJ - Final
11/79 p1872*

Although 30 CFR §50.10, which requires reporting of accidents to MSHA, was not promulgated as regulation pursuant to 1977 Act, it was applicable mandatory standard in June 1978, since, under transfer provisions of 1977 Act, Part 50, which was promulgated under Metal Act, remained in effect until such time as Secretary of Labor issued new or revised standard.

Citation charging that operator violated 30 CFR §50.10 because it failed to immediately report accident to MSHA when victim was taken to hospital or moved to intensive care unit is vacated, since Secretary of Labor failed to establish that accident in question was "reportable accident" as defined in 30 CFR §50.2.

30 CFR 50.10
STANDARDS - Promulgation under Metal Act - Transfer Provision - Applicability under 1977 Act, 40.10 40.05
30 CFR 50.10 30 CFR 50.2
REPORTING - Accident in Mine - Immediate Notification - Reportable Accident, 50.10 50.02

917
HECLA MINING COMPANY
WEST 79-251-M
April 1, 1980
ALJ - Review Denied
4/80 p793*

Operator's safety program and its efforts to enforce it do not relieve operator of liability for violation of 30 CFR §57.19-70 caused by skiptender's opening of cage door of shaft hoist while men were being hoisted; operator's lack of fault, however, is relevant to determination of appropriate penalty.

30 CFR 57.19-70
MAN HOISTING - Case Door of Shaft Hoist - Safety Program - Operator's Fault, 57.19 26.30 37.25

1191
HELDENFELS BROTHERS, INC.
CENT 79-280-M
October 29, 1980
ALJ - Final
10/80 p3173*

Observance of oiler's helper on outside of Caterpillar scraper cab while oiler was moving machine around in maintenance shop yard, thereby creating hazard of falling from machine and being run over, establishes violation of 30 CFR 55.9-40(c).

Eighteen-inch bermis insufficient to restrain vehicles using roadway elevated about 20 feet with base of 10 feet and therefore violates requirement of 30 CFR 55.9-22 that berms or guards be provided on outer bank of elevated roadways.

Safety standard, 30 CFR 55.6-112, requiring that burning rate of safety fuse in use at any time is to be measured, posted in conspicuous locations, and brought to attention of all men concerned with blasting, is violated when burning rate of safety fuse in Strawn cap magazine was not known or posted, thereby creating hazard of not being able to get far enough away from blast before it goes off.

Existence of brush and trees within 25 feet of explosives magazine and blasting agents storage, creating fire and explosion hazard, violates 30 CFR 55.6-5, which requires that areas surrounding magazines and facilities for storage of blasting agents are to be kept clear of rubbish brush, dry grass, or trees for distance of not less than 25 feet.

Use of berm, 12 to 20 inches high, on roadway approximately 600 feet long and inclined at angle of 11 degrees by 623 Caterpillar, with wheels five heet high and axle two and one-half feet high, and 631 Caterpillar scraper, with wheel height of approximately six feet and axle height of three feet, violates 30 CFR 55.9-22.

30 CFR 55.9-40(c)
HAULAGE - Transport of Men Outside Cabs of Mobile Equipment, 55.09
30 CFR 55.9-22
HAULAGE - Berms - Elevated Roadways, 55.09
30 CFR 55.6-112
EXPLOSIVES - Burining Rate of Safety fuse - Strawn Cap Magazine, 55.06
30 CFR 55.6-5
EXPLOSIVES - Magazine, Blasting Agents Storage - Proximity to Brush and Trees, 55.06
30 CFR 55.9-22
HAULAGE - Elevated Roadways, 55.09

910
HELDENFELS BROTHERS, INC.
DENV 79-575-PM
April 8, 1980
ALJ - Review Denied/Appealed
4/80 p851*

(Reference Docket Number DENV 79-576-PM and 5th Cir. Number 80-1605 or 80-1607)

Operators of mobile equipment must have full control of equipment while it is in motion as provided by 30 CFR 55.9-24 but management will not be found negligent when accident occurs if there is no evidence of mechanical defects, hazardous road conditions, or inadequate instruction to operators on use of equipment.

"Rule of thumb" that berm must be as high as axle of largest vehicle using road will be applied to determine if there is violation of 30 CFR 55.9-22 which requires that berms or guards be provided on outer banks of elevated roadways.

Operator's failure to prove that MSHA took unreasonable amount of time in proposing civil penalties or that any actual harm was suffered due to delay, justifies denial of operator's motion to dismiss due to MSHA's delay because Mine Safety and Health Act of 1977 prescribes procedural steps for assessment of civil penalties which require considerable time.

30 CFR 55.9-24
HAULAGE - Operator's Control of Mobile Equipment - Proof of Management's Negligence, 55.09 35.30
30 CFR 55.9-22
HAULAGE - Berms on Elevated Roadways - Required Minimum Height, 55.09
PENALTIES - Assessment Procedures - Unreasonable Delay - Evidence, 26.05 35.103

900
HELVETIA COAL COMPANY
PENN 79 165-R
April 29, 1980
ALJ - Review Denied
4/80 p1011*

(Reference Docket Number PENN 80-68)

Safety of miners requires issuance of withdrawal order encompassing entire mine when excessive concentration of methane is discovered in one section of mine and extent of area which would be affected in event of explosion cannot be determined and threat of explosion affects entire mine.

Operator is required by 30 CFR §50.10 to report accident to MSHA when methane readings in section of mine increase within period of five days to between five to ten percent as this condition constitutes an "inundation of a mine by a liquid or gas."

77: 107(e)
WITHDRAWAL ORDERS - Concentration of Methane - Imminent Danger - Withdrawal of Entire Mine Area, 24.01 24.50
30 CFR 50.10
REPORTING - "Accident" - Inundation by Gas, 50.0208 50.10

1261
HELVETIA COAL COMPANY
PENN 80-143-R
November 20, 1980
ALJ - Final
11/80 p3347*

Miners are exposed to imminent danger and withdrawal order is properly issued pursuant to Section 107(a) of Federal Mine Safety and Health Act when bare energized conductor is in close proximity to metal frame of improperly grounded battery charger; fact that battery charger is de-energized at time citation is issued is no defense and determination of imminent danger is not based on "as probable as not" standard.

77: 107(a)
IMMINENT DANGER - Energized Conductor - Proximity to Metal Frame of Improperly Grounded Battery Charger, 24.50
77: 107(a)

364
HELVETIA COAL COMPANY
PITT 78-322
August 23, 1978
ALJ - Review Granted
Unbound

77: 104(a)
77: 105(a)
77: 105(b)
77: 105(d)

365
HELVETIA COAL COMPANY
PITT 78-322
October 8, 1978
RC - Granting Review
Unbound

77: 105(d)

9
HELVETIA COAL COMPANY
PITT 78-322
May 1, 1979
RC - Reverse & Remand
5/79 p321*

Federal Mine Safety and Health Review Commission has jurisdiction under Federal Mine Safety and Health Act of 1977 to review, prior to proposal of penalties by Secretary of Labor, citation issued under Section 104(a) of Act, even though alleged violation has been abated by mine operator.

77: 104(a)
REVIEW COMMISSION JURISDICTION - Reviewability of Citation, 35.02 24.01

26
HELVETIA COAL COMPANY
PITT 79-12-P
March 14, 1979
ALJ - Review Denied
3/79 p103*

Occurrences which are not "accidents" within definition of 30 CFR §50.2(h) are not required to be recorded as accidents on MSHA Form 7000-1 under 30 CFR §50.20.

30 CFR 50.2(h) 30 CFR 50.20
RECORDKEEPING - Accidents - Coverage of Regulation, 50.20

34
HELVETIA COAL COMPANY
PITT 79-12-P
April 23, 1979
RC - Striking References
4/79 p26*

Evidentiary material attached to Secretary's petition for review that was not part of record before administrative law judge cannot be considered by Commission.

77: 113(d)(2)(C)
REVIEW COMMISSION PROCEDURE - Petition for Review - Additional Evidence, 35.24

1263
HERB COAL COMPANY
WILK 79-116-P
November 20, 1980
ALJ - Final
11/80 p3374*

Operator may not deny entry to federal mine inspectors based on lack of search warrant because Section 103(a) of Federal Mine Safety and Health Act authorizes entry to secretary or authorized agents for purpose of making inspections; however, operator negligence is not established where denial of entry is based upon bona fide belief that operator had right to object to warrantless inspection.

77: 103(a)
INSPECTIONS - Denial of Entry - Lack of Search Warrants - Negligence, 22.05 26.30

1256
HI TENN, INC.
BARB 79-69-P
November 19, 1980
ALJ - Final
11/80 p3307

PA

294
HIBBING TACONITE COMPANY
DENV 78-373-M
November 1, 1978
ALJ - Final
Unbound

77: 105(a)
77: 105(d)

1093
HILO COAST PROCESSING COMPANY
DENV 79-50-M
July 13, 1979
ALJ - Review Granted/Vacated
7/79 p895*

(Reference Numbers DENV 79-51-M, 79-52-M, 79-213-M, 79-296-M, 79-297-M, 79-298-M, and 79-299-M)

Citation for violation of dust standard must be vacated when evidence established that dust problem exists only 20 percent of the time, and miners use respirators during dusty season.

Citations for violation of noise standard applicable to sand, gravel, and crushed stone operations must be vacated because standard, 30 CFR §56.5-50, does not allow primary use of personal protection and leaves mine operator to guess as to how much money must be spent on other means of noise reduction before use of personal protection is appropriate.

AIRBORNE CONTAMINANTS - Dust Standard - Use of Respirators, 56.05
30 CFR 56.5-50
NOISE - Methods of Reduction - Personal Protection - Vagueness of Standard, 56.05 40.20
30 CFR 70.100

1056
HOMESTAKE MINING COMPANY
CENT 79-27-M
August 20, 1980
ALJ - Review Granted
8/80 p2295

30 CFR 57.12-82
30 CFR 57.3-22
30 CFR 57.6-103
30 CFR 57.11-12

1302
HOMESTAKE MINING COMPANY
CENT 80-92-M
December 16, 1980
ALJ - Final
12/80 p3630*

Citation for violation of 30 CFR 57.3-20 (ground support shall be used when needed) is vacated when no mining had been done in area for 15 years, deteriorated timbers were replaced, timbers and rock bolts were installed, shot crete was used, cited split post and loose timber were "ties," cited protruding rock had adequate support, and cited cracks in roof were not fresh but of long duration.

30 CFR 57.3-20
GROUND CONTROL - Adequate Support Consistent with Nature of Ground, 57.03

780
HOMESTAKE MINING COMPANY
DENV 79-155-PM
February 20, 1980
ALJ - Final
2/80 p493*

Requirement of 30 CFR §57.11-1 that safe means of access be provided to all working places applies to stairway that leads to tail pulley of feeder belt and is used by supervisors, cleanup men, and crusher mechanics when they grease tail pulley.

Requirement of 30 CFR §57.11-1 that safe means of access be provided to all working places applies to travelway to area in which regular maintenance is performed and applies regardless of whether work is actually being performed when citation is issued.

Operator's failure to guard openings above manway and ore bin did not violate requirement of 30 CFR §57.11-12 that openings near travelways be protected by railings, since manway, which was stopped at top by ongoing construction of chimney and removal of ladder section and was closed at bottom by danger sign, was not travelway within meaning of standard.

Operator's failure to label three principal power switches at borehole machine to show what units they controlled violated 30 CFR §57.2-8 because existence of three boxes without markings could confuse someone during emergency as to right switch to borehole machine.

30 CFR 57.11-1
TRAVELWAYS - Stairway - Tail Pulley - Cleanup - Crusher Mechanics, 57.11 57.0274
30 CFR 57.11-1
TRAVELWAYS - Working Places - Regular Maintenance - Work Actually in Progress, 57.11 57.0278
30 CFR 57.11-12
TRAVELWAYS - Failure to Guard Openings - Manway - Travelways - Removal of Ladder, 57.11 57.0274
30 CFR 57.2-8
ELECTRICITY - Power Switches - Labels - Confusion During Emergency, 57.12

1059
HOMESTAKE MINING COMPANY
DENV 79-579-PM
August 21, 1980
ALJ - Final
8/80 p2336

1227
HOWARD MULLINS
77-1086
December 31, 1980
US Appeals - DC Circuit
N/A*

(Reference also IBMA No. 75-39 and IMBA No. 75-40, Pocahontas Fuel Company)

Secretary of Interior is authorized to enforce by notice of violation provisions of Section 203(b)(3) of 1969 Act regarding retention of rate of pay by miners transferred for having contracted pneumoconiosis.

Appeals court will not apply its prior decision holding notices of violation issued under 1969 Act not subject to Act's review procedures retroactively to case pending at time of prior decision where parties to present case could not reasonably have anticipated such decision, purposes of Act would not be furthered by retroactive application, and parties would suffer hardship of repetitive proceedings to obtain ruling on merits of case.

Appeals court, in reviewing decision of Interior Board of Mine Operations Appeals, will accord considerable deference to Board's interpretation of its governing statute, but will correct Board's misinterpretation of its statutory mandate.

Phrase "regular rate of pay" in Section 203(b)(3) of 1969 Act means rate at which miner was actually and regularly compensated when transfer under such provision occurred; accordingly, Board erred in limiting miner to pay rate of his regular job classification when miner had been on temporary assignment at higher classification.

69: 203(b)(3)
TRANSFER OF MINERS - 1969 Act Provisions - Enforcement by Notice of Violation, 20.11 24.01
69: 104(b)
COURT PROCEDURE - Retroactivity of Prior Decision - Review of Notices of Violation, 201.60 35.02
JUDICIAL REVIEW - Review of Board Decision - Question of Law, 205.10
69: 203(b)(3)
TRANSFER OF MINERS - Rate of Pay Prior to Transfer - Temporary Assignment, 20.11

471
HOWARD STEPP COAL COMPANY
PIKE 78-30-P
July 13, 1978
ALJ - Final
Unbound

69: 109(a)
30 CFR 77.1003
30 CFR 77.1710(d)
30 CFR 77.403(a)
30 CFR 71.302
30 CFR 71.101
PA

1
HUBERT WILLIAMS
VINC 78-102-P
August 31, 1979
ALJ - Final
8/79 p1292*

Section foreman in charge of area of mine where roof fall occurred is agent of corporate operator as defined by section 3(e) of Federal Coal Mine Health and Safety Act of 1969.

Section foreman is liable under §109(c) of Federal Coal Mine Health and Safety Act of 1969 because operator violated 30 CFR §75.200, foreman acted as agent of corporate operator, and foreman knew about existence of exposed roof rock and permitted activities to proceed in violation of roof control plan.

In assessing civil penalty against section foreman under §109(c) of Federal Coal Mine Health and Safety Act of 1969, seriousness of violation, degree of negligence involved, and financial condition of foreman, including his salary, are considered.

69: 3(e)
  AGENTS - Section Foreman - Agent of Operator, 5.109
69: 109(c) 30 CFR 75.200
  AGENTS - Section Foreman - Liability for Violation - Knowledge of Exposed Roof Rock, 20.80 75.0200
69: 109(c)
  AGENTS - Section Foreman - Penalty Assessment, 26.80

1342
HUDSON RIVER AGGREGATES, INC.
YORK 80-13-M
October 27, 1980
ALJ - Review Denied
10/80 p3119*

Operator's failure to correct defective condition of rusted cross sectional braces and rotted framework of sand conveyor violates requirement of 30 CFR 56.9-2 that equipment defects affecting safety be corrected before equipment is used.

30 CFR 56.9-2
  HAULAGE - Defective Condition of Sand Conveyor - Failure to correct, 56.09

853
HYANNIS SAND & GRAVEL, INC.
YORK 80-39-M
June 12, 1980
ALJ - Final
6/80 p1401

PA

852
HYANNIS SAND & GRAVEL, INC.
YORK 80-60-M
June 12, 1980
ALJ - Final
6/80 p1399

PS

847
IDEAL BASIC INDUSTRIES-CEMENT DIVISION
SE 79-16-M
June 9, 1980
ALJ - Review Granted
6/80 p1352

30 CFR 56.9-87
30 CFR 56.14-1
30 CFR 56.9-2
30 CFR 56.11-1
30 CFR 56.16-5

148
IDEAL CEMENT COMPANY
BARB 79-61-PM
October 3, 1979
ALJ - Final
10/79 p1506*

(Reference Docket Number 79-267-PM)

Citation for violation of 30 CFR §56.9-87, which requires backup alarm on mobile equipment, is vacated since inspector failed to ascertain that driver's view of rear of truck was obstructed by interviewing truck driver or positioning himself in driver's seat.

Fact that inspector does not specifically recall whether coal elevator was moving when unguarded chain drive was observed does not vitiate citation for violation of 30 CFR §56.14-6 since inspector observed coal around elevator buckets and kiln was burning and operating.

Fact that accumulation of coal and clinker dust in walkway was caused by sudden interruption and blockage of the conveyor system that occurs during production cycle is no defense to charge of violation of requirement under 30 CFR §56.20-3 that workplaces be kept clean and orderly.

Failure to install guard on bend pulley pinch point violates 30 CFR §56.14-1, even though bend pulley is not specifically mentioned in standard, since standard refers to similar exposed moving machine parts which would include bend pulleys.

Exposed pulley pinch point that was located above level of adjacent walkway which itself was within four or five inches of conveyor belt constituted violation of 30 CFR §56.14-1, since miner could be caught in pinch point if he tripped or fell while walking along walkway.

Citation for violation of 30 CFR §56.11-1 is vacated since inspector's conclusion that accumulation of clinker dust on kiln roof would cause roof to collapse on walkway was based on conjecture and speculation and not on any engineering tests or advice concerning structural integrity of kiln roof.

Operator's representative was not denied right under §103(f) of 1977 Act to accompany inspector on inspection of mine even though representative was not present when citation was issued since representative knew of inspector's presence at mine, inspector did not intentionally elude foreman, and inspector discussed citation with representative after it was issued.

Mandatory standards under 30 CFR Parts 55, 56, and 57 are applicable under 1977 Act since Section 301(b) of 1977 Amendments Act expresses Congressional intent that standards promulgated pursuant to Federal Metal and Nonmetallic Mine Safety Act remain in effect under 1977 Act and mining industry was given ample opportunity for comment during rulemaking process.

30 CFR 56.9-87
HAULAGE - Mobil Equipment - Backup Alarm - Obstruction of View, 56.09
30 CFR 56.14-6
MECHANICAL EQUIPMENT - Coal Elevator Chain Drive - Absence of Guard - Presence of Coal, 56.14
30 CFR 56.20-3
HOUSEKEEPING - Walkways - Accumulation of Coal - Sudden Interruption in Production Cycle, 56.20 37.10
30 CFR 56.14-1
MECHANICAL EQUIPMENT - Bend Pulley Pinch Point - Absence of Guard - Similar Moving Parts, 56.14
30 CFR 56.14-1
MECHANICAL EQUIPMENT - Exposed Pulley Pinch Point - Conveyor Belt - Walkway, 56.14
30 CFR 56.11-1
TRAVELWAYS - Kiln Roof - Danger of Collapse on Walkway - Failure to Perform Tests, 56.11
77: 103(f)
INSPECTIONS - Operator's Representative - Walk-around Right, 22.20
77: 301(b)
STANDARDS - Promulgatin under Metal Act - Aplication under 1977 Act - Congressional Intent - Opportunity to Comment, 40.10 40.05

1058
INDEPENDENT CEMENT CORPORATION
YORK 79-92-M
August 21, 1980
ALJ - final
8/80 p2329*

Although it is preferable for Mine Safety and Health Administration to charge violations in language of cited standard, its use of equivalent alternative terminology, having same technical meaning and well enough known in industry to enable those within field to understand and apply terminology, provides requisite notice to operator of violations charged.

Provisions of 30 CFR 56.5-50 which concern maximum level of noise exposure allowed do not require that dosimeter used by Mine Safety and Health Administration to obtain noise-level readings be certified by chain of certification to standards maintained by National Bureau of Standards, and operator's argument that MSHA failed to prove that dosimeters were sufficiently accurate must be rejected when MSHA provides evidence that periodic calibration tests were made to insure accuracy of dosimeter.

30 CFR 56.5-50
CITATIONS - Wording - Particularity - Sufficent Notice, 24.05
30 CFR 56.5-50
NOISE - Exposure to Excessive Levels - Accuracy of Dosimeter - Testing, 56.05

960
ISELIN PREPARATION COMPANY
PITT 78-343
August 4, 1978
ALJ - Review Granted/Dismissed
Unbound

77: 105(d)
29 CFR 2700.18-22 (I)

961
ISELIN PREPARATION COMPANY
PITT 78-343
July 6, 1979
RC - Dismissing Review
Unbound

1241
ISLAND COUNTY HIGHWAY DEPARTMENT
WEST 79-372-M
November 5, 1980
ALJ - Final
11/80 p3227

30 CFR 56.11-1

1128
ISLAND CREEK COAL COMPANY
BARB 76-297-P
July 9, 1980
RC
7/80 p1689*

(Reference Old Docket Number IBMA No. 77-27)

Secretary has right to repudiate settlement agreement entered into with mine operator which was based on good faith error in that assessment official was unaware that violation was based on fatal accident.

SETTLEMENTS - Based on Good Faith Error - Secretary's Right to Repudiate, 35.40
PS

437
ISLAND CREEK COAL COMPANY
BARB 78-12-P
April 7, 1978
ALJ - Final
Unbound*

"Destroyed" in 30 CFR 77.1303(d) means physical demolition; accordingly, deteriorating explosives that must be sent out of mine in separate trailer for pickup by manufacturer are in process of disposition, are headed for destruction, and are not being "destroyed" within meaning of that term in 30 CFR 77.1303(d).

MSHA contention that manner in which operator's deteriorated explosives were destroyed was unsafe and improper in violation of of 30 CFR 77.1303(d) because experienced people were not handling or at least supervising handling of explosives as required by 30 CFR 77.1303(a), is rejected, since operator was not charged with violating 30 CFR 77.1303(a) expressly or by inference, allegation was raised for the first time in MSHA brief, and there was no indication that operator was aware that this particular violation was being charged against it; accordingly, operator lacked adequate notification, and there is no evidence that surface foreman was not "experienced" and thus capable of supervising handling of explosives.

Secretary does not prove that operator violated 30 CFR 77.1303(d) by failing to destroy deteriorated explosives "in a safe manner" where deteriorated explosives were sitting in yard in trailer, operator had transported them separately out of mine in portable magazine for pickup by manufacturer, and operator handled explosives in manner complying with manufacturer's recommendations.

30 CFR 77.1303(d)
EXPLOSIVES - Handling and Use - Distruction, 77.1303
30 CFR 77.1303(d)
EXPLOSIVES - Handling and Use - Notice to Operator of Alleged Violation, 77.1303 24.05
30 CFR 77.1303(d)
EXPLOSIVES - Handling and Use - "In a Safe Manner", 77.1303
69: 109(a)(1)
69: 104(a)

279
ISLAND CREEK COAL COMPANY
HOPE 78-4-P
September 21, 1978
ALJ - Final
Unbound

77: 110(i)
77: 110(a)
30 CFR 75.512-2

280
ISLAND CREEK COAL COMPANY
HOPE 78-4-P
September 21, 1978
ALJ - Final
Unbound

30 CFR 75.603
30 CFR 75.604
30 CFR 75.506
30 CFR 75.500
30 CFR 75.501
30 CFR 75.200
30 CFR 75.1722
30 CFR 75.512
30 CFR 75.323
30 CFR 75.604(c)
30 CFR 75.604(b)
30 CFR 75.1722(c)

487
ISLAND CREEK COAL COMPANY
HOPE 78-300
July 12, 1978
ALJ - Final
Unbound

69: 104(a)
77: 107(e)(1)
30 CFR 75.200

710
ISLAND CREEK COAL COMPANY
HOPE 79-197-P
February 25, 1980
ALJ - Final
2/80 p520*

Citation for violation of requirement in 30 CFR §75.302-1 that line brattice and check curtain extended from last open crosscut out to within 10 feet of point of deepest penetration is not upheld because it was issued between first and second shifts while coal was not actually being cut, mined or loaded from working face.

Fall area supported according to minimum requirements of operator's roof control plan but not supported or adequately controlled to protect persons from falls of roof or ribs violates requirement of 30 CFR §75.200.

30 CFR 75.302-1
VENTILATION - Working Face - Line Brattice - Specified Activities, 75.0302
30 CFR 75.302(a)
ROOF SUPPORT - Roof Control Plan - Need for Additional Support, 75.0200
30 CFR 75.200

1111
ISLAND CREEK COAL COMPANY
KENT 79-50
August 14, 1980
ALJ - Final
8/80 p2259*

Fire extinguishers 80 feet or more from electrical installation are excessively distant from installation and do not qualify as fire extinguishers "at" permanent electrical installation within meaning of 30 CFR 75.1100-2(e); accordingly, where all fire extinguishers other than single 5-pound extinguisher are 80 to over 200 feet from belt drive power center, operator is in violation of 30 CFR 75.1100-2(e).

Inspector's inability to testify in support of citation alleging violation of 30 CFR 75.1722, because of his involvement in serious auto accident, and Secretary's conclusion that language of citation alleging violation of 30 CFR 75.605 does not properly show violation of that section, constitute adequate reasons for vacating citations.

30 CFR 75.1100-2(e)
FIRE PROTECTION - Extinguishers - Distance from Electrical Installation, 75.1100
30 CFR 75.605
CITATIONS - Termination - Reasons, 24.08

194
ISLAND CREEK COAL COMPANY
KENT 79-129
February 25, 1980
RC - Reverse & Remand
2/80 p279*

In considering withdrawal order, judge's dismissal of underlying citation because withdrawal order was vacated is reversed since allegation of violation survives vacation of order it is contained in, and, if proven, assessment of penalty is required.

77: 104(d)(1)
CITATIONS - Termination of Withdrawal Order - Underlying Citation - Penalty Assessment, 24.08 26.01

1104
ISLAND CREEK COAL COMPANY
KENT 79-216-R
July 30, 1980
ALJ - Review Denied/Appealed
7/80 p1983*

(Reference Docket Numbers WEVA 79-183-R, 79-184-R, and WEVA 80-72 also D.C. Cir. Number 80-2201)

Citations for violations of Section 103(f) of Federal Mine Safety and Health Act, based on operator's refusal to compensate miners' representatives for accompanying inspectors on "spot" inspections, are vacated because Review Commission has held that "walkaround" pay provision only applies to required annual "regular" inspections.

Operator's claim of damages against Mine Safety and Health Administration for wages it paid under protest to miners' representatives as "walkaround" pay because of MSHA's erroneous interpretation of Act and operator's request that damages be awarded as setoff against future civil penalties are denied because it is beyond judge's authority to grant such remedy; operator's remedy, if any, lies in independent action against erroneously paid employees.

77: 103(f)
INSPECTIONS - Requirement of "Walkaround" Pay for Miners' Representative - Spot Inspection, 22.20
REMEDIES - "Walkaround" Pay Erroneously Paid to Miners - Damages Sought Against MSHA, 35.50 22.20

679
ISLAND CREEK COAL COMPANY
KENT 80-22-D
January 24, 1980
ALJ - Review Denied/Appealed
1/80 p93

(Reference D.C. Cir. Number 80-1350)

77: 103(i)

369
ISLAND CREEK COAL COMPANY
PIKE 79-18
January 30, 1979
ALJ - Review Granted
Unbound

29 CFR 2700.19(c) (I)

89
ISLAND CREEK COAL COMPANY
PIKE 79-18
August 3, 1979
RC
8/79 p989*

Under Interim Rules of Procedure, application for review of withdrawal order that reaches Review Commission three days after expiration of filing period is untimely filed, despite fact that MSHA received copy of application within filing period.

29 CFR 2700.19(c) (I)
REVIEW COMMISSION PROCEDURE - Application for Review - Withdrawal Order - Failure to File Timely Application, 35.103

924
ISLAND CREEK COAL COMPANY
VA 79-61-R
June 3, 1980
ALJ - Review Denied/Appealed
6/80 p1325*

(Reference Docket Numbers VA 79-62-R, 79-63-R, and D.C. Cir. Number 80-1859)

Operators are not required to pay employee representatives for time spent accompanying MSHA inspectors on their spot inspection rounds according to existing precedent of Commission.

Fact that commission's final rulings are on appeal in circuit court is no basis for staying proceedings which rely on those rulings.

INSPECTIONS - Spot Inspections - Walkaround Compensation not Required, 22.01
JUDICIAL REVIEW - Stay Pending Appeal, 35.45
77: 103(f)
77: 103(i)

988
ISLAND CREEK COAL COMPANY
VA 79-74-R
September 11, 1980
ALJ - Review Denied/Appealed
9/80 p2583

(Reference D.C. Cir. Number 80-2405)

77: 103(f)

869
ISLAND CREEK COAL COMPANY
VA 79-81-D
June 19, 1980
ALJ - Review Denied/Appealed
6/80 p1529

(Reference 4th Cir. Number 80-1799)

77: 105(c)

1127
ISLAND CREEK COAL COMPANY
VA 79-81-D
July 25, 1980
RC - Dismiss Petition
7/80 p1698*

(Reference 4th Cir. Number 80-1799)

Mine operator's petitions for discretionary review are dismissed as prematurely filed since judge's purported final decision allowed Secretary seven days to propose order and operators seven days to respond to proposed order and therefore did not constitute judge's final disposition of proceeding.

REVIEW COMMISSION PROCEDURE - Petitions for Review - Prematurely Filed - Finality of Judge's Decision, 35.24

996
ISLAND CREEK COAL COMPANY
VA 79-81-D
September 18, 1980
ALJ - Review Denied
9/80 p2640

77: 105(c)

645
ISLAND CREEK COAL COMPANY
WEVA 79-170
October 31, 1979
ALJ - Final
10/79 p1780

810
ISLAND CREEK COAL COMPANY
WEVA 79-242-R
April 22, 1980
ALJ - Review Denied/Appealed
4/80 p942

(Reference D.C. Cir. Number 8-1630)

77: 103(f)

725
ISLAND CREEK COAL COMPANY
WEVA 79-338
March 19, 1980
ALJ - Final
3/80 p730

PS

1095
ISLAND CREEK COAL COMPANY
WEVA 79-405
June 27, 1980
ALJ - Final
Unbound*

30 CFR §75.1100-2(g), which requires that portable fire extinguisher or 240 pounds of rock dust be provided at locations where welding, cutting, or soldering with arc or flame is being done, does not aply to situation where miner is using handheld propane burner unit to heat and bond new insulation to electrical cable because standard, by its own precise language, specifically limits its application to situation where open flame is used for purposes of welding, cutting, or soldering.

30 CFR 75.1100-2(g)
FIRE PROTECTION-Welding, Cutting, Soldering Performed with Flame-Extinguishers-Appl. of Std. to Other Fire Hazards, 75.1100

727
ISLAND CREEK COAL COMPANY
WEVA 80-48-D
March 19, 1980
ALJ - Final
3/80 p734

77: 105(c)(1)

328
ITMANN COAL COMPANY
HOPE 78-122
December 15, 1978
ALJ - Review Denied
Unbound

69: 3(j)
69: 104(a)

329
ITMANN COAL COMPANY
HOPE 78-122
December 15, 1978
RC
Unbound

69: 3(j)
69: 104(a)

142
ITMANN COAL COMPANY
HOPE 78-347
October 12, 1979
ALJ - Final
10/79 p1591*

Inspector correctly issued citation under §104(d)(1) of 1977 Act for unwarrantable failure to comply with 30 CFR §75.200, since operator knew about cracked roof before mining commenced and chose to add posts for support, which would leave room for mining machine, rather than to add cross-bars or roof bolts, which would have provided adequate additional support, as required by approved roof control plan.

Inspector correctly issued withdrawal order under § 104(d)(1) of 1977 Act for unwarrantable failure to comply with 30 CFR §75.400, since float coal dust up to nine inches thick accumulated along distance of 250 feet for period of at least one week and covered electric motors and cables.

77: 104(d)(1) 30 CFR 75.200
ROOF SUPPORT - Unwarrantable Failure Citation - Cracked Roof - Violation of Roof Control Plan - Additional Support, 75.0200 24.20
77: 104(d)(1) 30 CFR 75.400
COMBUSTIBLE MATERIALS - Unwarrantable Failure Withdrawal Order - Float Coal Dust - Electrical Dust Covered Motors, 75.0400 24.20

441
ITMANN COAL COMPANY
HOPE 78-356
May 26, 1978
ALJ - Final
Unbound

77: 105(d)

667
ITMANN COAL COMPANY
HOPE 78-690-P
December 5, 1979
ALJ - Final
12/79 p2134

30 CFR 75.200
77: 104(a)
30 CFR 75.303

768
ITMANN COAL COMPANY
HOPE 79-307
February 26, 1980
ALJ - Final
2/80 p591*

Inspector reasonably refused to extend time allowed for abatement of violation of 30 CFR §75.1103-4(a) requirement that automatic fire sensor and warning device system be equipped with sensor within each belt flight because operator did not make reasonable effort to place necessary sensor as evidenced by failure to adequately supervise employee's abatement efforts, even though necessary equipment was available and time allotted for abatement was ample.

30 CFR 75.1103-4(a) 77: 104(b)
WITHDRAWAL ORDER - Failure to Abate - Lack of Reasonable Effort, 24.10 75.1107

149
ITMANN COAL COMPANY
WEVA 79-119-R
October 10, 1979
ALJ - Final
10/79 p1573*

Imminent danger withdrawal order under §107(a) of 1977 Act is valid even though §103(k) control order is in effect at mine, since purpose of imminent danger withdrawal order is not only to withdraw miners but to insure that they remain withdrawn until imminent danger has been eliminated.

77: 107(a) 77: 103(k)
WITHDRAWAL ORDERS-Sec 103(k) Control Order-Simultaneous Closure Orders-Purpose of Imminent Danger Withdrawal Order, 24.50 22.30

882
ITMANN COAL COMPANY
WEVA 80-7-R
June 26, 1980
ALJ - Final
6/80 p1643*

Imminent danger withdrawal order for violation of 30 CFR §75.200 is properly issued when miner is seen travelling under cracked and unsupported roof and evidence establishes that it was practice of miners to travel under unsupported roof, because such practice could be expected to cause death or serious physical harm before practice could be abated.

30 CFR 75.200
IMMINENT DANGER - Validity of Withdrawal Order - Travel Under Unsupported Roof, 24.50 75.0200
77: 107(a)
77: 3(j)

1048
ITMANN COAL COMPANY
WEVA 80-8-R
August 11, 1980
ALJ - Final
8/80 p2193*

"Similar violation" is violation of any mandatory health or safety standard which is caused by unwarrantable failure of operator to comply; failure to establish intervening inspection between issuance of withdrawal order under Section 104(d)(1) of 1977 Act on March 14, 1979 and issuance of Section 104(d)(2) withdrawal order after inspection on September 5, 1979, which discloses no similar violations, does not break chain of orders; accordingly, Section 104(d)(2) withdrawal order is valid.

Accumulation of puddles of hydraulic oil in car haul area of mine in violation of 30 CFR 75.400 is established where operator and Secretary agree that some puddles contained water covered with oil film and others were composed of hydraulic oil, it was necessary to disturb puddle surfaces to find water underneath, operator voluntarily paid $700 civil penalty for violating preshift examination regulation of 30 CFR 75.303 at time and place of occurrence, and inspector's estimate of several hundred gallons of oil in area is credible.

Unwarrantable failure of operator to comply with 30 CFR 75.400 justifies issuance of withdrawal order under Section 104(d)(2) of 1977 Act where operator knew or should have known of existence of hydraulic oil accumulation in car haul area, area had been cited less than one month previously for same condition, and operator's witnesses concede there was more hydraulic oil in this area than was normal, even if operator correctly asserts that oil spillage occurred on previous shift.

30 CFR 75.400 77: 104(d)(2)
WITHDRAWAL ORDERS - Similiar Violations - Section 104(d)(2), 24.25
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Oil Puddles, 75.0400
77: 104(d)(2)
WITHDRAWAL ORDERS - Unwarrantable Failure to Comply - Section 104(d)(1), 24.20 75.0400

1122
ITMANN COAL COMPANY
WEVA 80-9-R
July 31, 1980
ALJ - Review Denied
7/80 p1986*

Issuance of imminent danger withdrawal order does not require that Mine Safety and Health Administration prove that "it is just as probable as not" that accident would occur because each case must be evaluated in light of risk of serious harm or death to which affected miners are exposed under conditions existing at time of issuance of order, and issuance of withdrawal order is justified when excessive amount of methane is found in area with high potential for roof falls.

Provisions of 30 CFR 75.329 require that when ventilation system is used in abandoned area, system must continuously dilute, render harmless, and carry away methane and other explosive gases, and require that air from abandoned areas which enters another split of air shall not contain more than two percent methane, and operator violates standard when methane registering nine percent is found in area of abandoned mine because ventilation system failed to adequately dilute methane.

Miners who are idled by withdrawal order are entitled to receive compensation for idle time, according to Section 111 of Federal Mine Safety and Health Act of 1977, and amount of time that miners are idled is period of withdrawal minus period of alternate work which they performed, and miners are entitled to be compensated for that period, up to maximum of one week.

77: 107(a)
IMMINENT DANGER-Issue of Withdrawal Order-Evaluation of Conditions-Reasonable Expectation of Injury/Accident-Methane, 24.50 75.0329
30 CFR 75.329
VENTILATION - Abandoned Areas - Bleeder Systems - Test for Adequacy, 75.0329
77: 111
COMPENSATION - Miners Idled by Withdrawal Order, 20.13

1015
ITMANN COAL COMPANY
WEVA 80-132-R
September 30, 1980
ALJ - Final
9/80 p2738*

Imminent danger withdrawal order, issued under Section 107(a) of 1977 Act because miner was observed shoveling coal in precarious position between unguarded, moving conveyor belts, is affirmed even though miner was not in affected area or exposed to any moving parts at time order was issued, since unsafe practice existed which could reasonably be expected to result in death or serious injury to miner before it could be abated by reinstruction of miner.

77: 107(a)
IMMINENT DANGER - Exposure to Danger at Time Order is Issued, 24.50

1277
ITMANN COAL COMPANY
WEVA 80-140
June 30, 1980
ALJ - Final
11/80 p3456

1154
ITMANN COAL COMPANY
WEVA 80-321-D
October 6, 1980
ALJ - Final
10/80 p2856

1245
J P BURROUGHS & SON, INC.
LAKE 80-173-M
November 13, 1980
ALJ - Final
11/80 p3266*

Operator violates requirement of 30 CFR 56.4-29 that fire extinguisher be "immediately available at the site" because extinguisher was on truck on level below work area and could be reached only by going down ladder and traveling 30 or more feet around or under conveyor.

Operator violates requirement of 30 CFR 56.9-87 that heavy duty equipment be provided with audible warning devices when operator of front-end loader had obstructed rear view and alarm on wheel was not audible above surrounding noise when loader was in operation.

Operator violates 30 CFR 56.17-1 for not providing sufficient light to work safely when there existed only one or two light bulbs in crushed stone feed tunnel; inspector's opinion that illumination is insufficient is all that is required to establish violation and measuring devices or scientific testing are not required.

30 CFR 56.4-29
FIRE PREVENTION - Extinguisher - "Immediately Available", 56.04
30 CFR 56.9-87
HAULAGE - Audible Warning Devices - Backup Alarm, 56.09
30 CFR 56.17-1
ILLUMINATION - Sufficient Lighting to Provide Safe Work Area, 55.17
30 CFR 56.14-29
30 CFR 56.9-22

1081
J P BURROUGHS & SON, INC.
LAKE 80-223-M
April 29, 1980
ALJ - Review Granted
Unbound

916
J P BURROUGHS & SON, INC.
LAKE 80-223-M
June 12, 1980
RC - Remanding
6/80 p1199*

Judge committed reversible error in granting Secretary's motion to dismiss proceeding without waiting for and considering operator's timely opposition to motion.

29 CFR 2700.10(b) 29 CFR 2700.8(b)
REVIEW COMMISSION PROCEDURE - Secretary's Motion to Dismiss - Ruling Before Receipt of Operator's Timely Opposition, 35.22 35.16

1019
J P BURROUGHS & SON, INC.
LAKE 80-223-M
June 27, 1980
ALJ - Review Granted
7/80 p1707

77: 105(a)
30 CFR 100.6(b)

1153
J SANTORO, INC.
WILK 79-103-PM
October 6, 1980
ALJ - Final
10/80 p2853

PA

751
JAMES F. CRUMBAKER
BARB 79-313
January 2, 1980
ALJ - Final
1/80 p7*

Miner's refusal to take roof bolting machine into crosscut where roof bolts were further apart than allowed by operator's roof control plan was protected activity under §105(c)(1) of 1977 Act.

77: 105(c)(1)
DISCRIMINATION - Refusal to Install Roof Bolts - Violation of Roof Control Plan - Protected Activity, 30.055

1298
JAQUAYS MINING CORPORATION
DENV 79-458-M
December 16, 1980
ALJ - Final
12/80 p3608

29 CFR 2700.84

1297
JAQUAYS MINING CORPORATION
WEST 79-233-M
December 16, 1980
ALJ - Final
12/80 p3605

30 CFR 57.6-1

1301
JAQUAYS MINING CORPORATION
WEST 80-1-M
December 16, 1980
ALJ - Final
12/80 p3625

29 CFR 2700.27(c)
30 CFR 57.14-1

553
JEFFERSON COUNTY HWY. DEPT.
BARB 79-146-PM
June 25, 1979
ALJ - Final
6/79 p619

30 CFR 56.9-87

806
JESSEE S MORIE & SON, INC.
WILK 78-322-PM
April 11, 1980
ALJ - Final
4/80 p862

PS

1132
JEWELL RIDGE COAL CORPORATION
VA 79-78
September 11, 1980
ALJ - Final
9/80 p2578*

Provisions of Section 103(f) of Federal Mine Safety and Health Act of 1977 require operator to compensate miners' representative who accompanies inspector on regular inspection of mine, and fact that operator paid representative who accompanied inspector who was making "spot" inspection of same mine on same day is immaterial to operator's obligation to compensate under Section 103(f).

77: 103(f)
INSPECTIONS - Walkaround Rights - Compensation of Miners' Representative, 22.10

1341
JEWELL RIDGE COAL CORPORATION
VA 80-77
November 21, 1980
Appeal Filed/Dismissed
N/A

(Reference D.C. Cir. Number 80-2420)

30 CFR 75.400

962
JIM WALTER RESOURCES, INC.
BARB 77-266-P
October 19, 1978
ALJ - Review Granted
8/80 p2090

69: 109(c)
69: 104(e)
30 CFR 77.1903(b)

135
JIM WALTER RESOURCES, INC.
BARB 77-266-P
November 21, 1979
RC - Reverse & Remand
11/79 p1827*

Notice of citation did not lack specificity since operators were able to identify and thereby abate allegedly violative condition and were not deprived of notice sufficient to enable them to defend at hearing.

77: 107(b) 30 CFR 77.1903(b)
CITATIONS - Specificity - Notice of Violation - Identification of Violative Condition - Ability to Prepare Defense, 24.05

1078
JIM WALTER RESOURCES, INC.
BARB 77-266-P
April 1, 1980
ALJ - Denied/Appld/Dismsd
Unbound

(Reference also BARB 76X465-P and D.C. Cir. Number 79-2527)

30 CFR 77.1903(b)

1031
JIM WALTER RESOURCES, INC.
BARB 77-266-P
July 25, 1980
ALJ - Review Granted
7/80 p1890

(Reference Docket Number BARB 76X465-P)

30 CFR 77.1903(b)

304
JIM WALTER RESOURCES, INC.
BARB 78-448-P
November 1, 1978
ALJ - Final
Unbound

30 CFR 77.404(a)
PA

799
JIM WALTER RESOURCES, INC.
BARB 78-638
January 17, 1979
ALJ - Appealed
Unbound*

Imminent danger existed where accident investigation by inspector revealed serious threat of rib roll evidenced by prevalence of loose and overhanging ribs and earlier fatality caused by rib roll.

Since it was impractical for inspector to determine each incident of loose rib prior to issuing withdrawal order, his finding that entire active workings of mine were affected was sufficient determination of extent of area covered by order.

Inspector should not be precluded from issuing imminent danger withdrawal order where further specificity was impractical at time of issuance due to extensiveness of condition at which it was directed.

77: 107(a)
IMMINENT DANGER - Danger of Rib Roll - Loose Ribs, 24.50
77: 107(a)
IMMINENT DANGER - Scope of Withdrawal Order, 24.50
77: 107(a)
IMMINENT DANGER - Specificity of Order, 24.05 24.50

405
JIM WALTER RESOURCES, INC.
BARB 78-638
February 23, 1979
RC - Denying Petition
Unbound

77: 107(a)

121
JIM WALTER RESOURCES, INC.
BARB 78-652-P
September 4, 1979
ALJ - Final
9/79 p1317*

Although 30 CFR §75.1403 is underground coal mine standard it clearly applies to some surface conditions of underground mine and, specifically, to condition of installing derails or stop blocks at tracks near top of mine shaft.

It is not sufficient that purpose of safeguard notice issued pursuant to 30 CFR §75.1403 was violated if that purpose was not expressly stated in notice and notice lacks sufficient specificity to cover hazardous condition.

30 CFR 75.1403
HAULAGE - Safeguards - Applicability of Standard to Surface Area - Derails for Track, 75.1403
30 CFR 75.1403
HAULAGE - Safeguard Notice - Specificity, 75.1403

333
JIM WALTER RESOURCES, INC.
BARB 79-75
January 9, 1979
ALJ - Final
Unbound

29 CFR 2700.29 (I)

1247
JIM WALTER RESOURCES, INC.
SE 80-43-R
November 14, 1980
ALJ - Final
11/80 p3276

30 CFR 75.200

193
JOHN MATALA
78-0035-W(H)
February 13, 1980
DISTRICT COURT
N/A*

Miner transferred to less dusty area of mine because of evidence of pneumoconiosis is entitled pursuant to 30 U.S.C. §843(b)(3) under 1969 Act to be compensated at same dollar rate - or at same classification rate - as he was immediately prior to his transfer.

69: 203(b)(3)
TRANSFER OF MINERS - Less Dusty Area - Pneumoconiosis - Compensation - Classification Rate, 20.11

4
JOHN MATALA
MORG 76-53
April 5, 1979
RC - Appealed - Dismissed
4/79 P1*

(Old Docket Number IBMA No. 76-96 see also 4th Cir. Number 79-1269)

In light of extensive provisions of Section 428 of Federal Coal Mine Health and Safety Act of 1969 for review of claims of discrimination by mine operators against miners suffering from pneumoconiosis, Federal Mine Safety and Health Review Commission will decline to exercise jurisdiction under general discrimination provision, Section 110(b) of 1969 Act, to review miner's claim that mine operator failed to maintain miner's rate of pay after transfer to less dusty area of mine, as required by Section 203(b)(3) of 1969 Act.

69: 110(b) 69: 203(b)(3)
DISCRIMINATION - Comm Jurisdiction under 1969 Act - Transfer of Miner Suffering from Pneumoconiosis - Rate of Pay, 35.02 30.01 20.11

1269
JOHN PETERSEN
WEST 79-300
November 25, 1980
ALJ - Final
11/80 p3404*

Operator is not required by mandatory safety standard 30 CFR 56.12-30 (correction of dangerous conditions before wiring is energized) to install weatherhead on drive motor; wrapping of wires coming out of motor with friction tape and rubber satisfies requirements of standard.

Operator violates requirement of 30 CFR 56.14-1 that guards be provided around exposed moving machine parts which are likely to cause injury, where guard is not provided around tail pulley of return conveyor to shaker screen and pathway existing along equipment indicates there is likelihood that one could become entangled in machine.

30 CFR 56.12-30
ELECTRICAL HAZARDS - Insulated Wires - Adequacy, 56.12
30 CFR 56.14-1
MECHANICAL EQUIPMENT - Guards - Exposed Moving Machine Parts, 56.14

1163
JOHN R SAND AND GRAVEL
LAKE 80-158-M
October 15, 1980
ALJ - Final
10/80 p2925

PA

912
JOHNSON BROTHERS COAL COMPANY, INC.
PIKE 79-41-P
April 15, 1980
ALJ - Final
4/80 p904*

(Reference Docket Number PIKE 79-107-P)

When no technology exists to provide usable canopies for electric face equipment which operator is using, impossibility of obtaining equipment can be used as affirmative defense against claim of violation of 30 CFR §75.1710 but nominal penalty will be assessed if operator did not try to obtain canopies until after citations were issued.

Operator's knowing use of defective equipment is no defense to violation of 30 CFR 75.503 which requires that electric face equipment be maintained in permissible condition

Leaving magazines used for storage of explosives unlocked and unattended is serious violation of 30 CFR 77.1301(c)(8) even though magazine is located near mine office and likelihood of theft is low.

Operator violated requirements of 30 CFR §75.1701 as 20-foot boreholes were not being drilled in advance of working face at time when mine was within 100 to 150 feet of adjacent mine and there was possibility that miners would cut into abondoned mine and be drowned by water or overcome to noxious gases which have accumulated in abandoned mine.

30 CFR 75.1710
CANOPIES OR CABS - Required on Electric Face Equipment - Impossible to Obtain - Attempt Made Following Citation, 75.1710 37.10
30 CFR 75.503
ELECTRICAL HAZARDS - Maintenance of Electric Face Equipment - Use of Defective Equipment, 75.0503 37.01
30 CFR 77.1301(c)(8)
EXPLOSIVES - Storage - Unlocked Magazines Hazardous, 77.1301
30 CFR 75.1701
ABANDONED AREAS - Adjacent Mines - Drilling of Boreholes, 75.1701

720
JONES & LAUGHLIN STEEL CORPORATION
PENN 79-145
March 11, 1980
ALJ - Final
3/80 p678

30 CFR 75.321

1061
JONES & LAUGHLIN STEEL CORPORATION
PENN 80-53
August 27, 1980
ALJ - Final
8/80 p2349

30 CFR 75.200

436
JONES & LAUGHLIN STEEL CORPORATION
PITT 77-32-P
March 24, 1978
ALJ - Final
Unbound

69: 109(a)(1)
30 CFR 75.1403

576
KAISER CEMENT & GYPSUM CORPORATION
DENV 79-244-PM
July 27, 1979
ALJ - Final
7/79 p968

PS

434
KAISER STEEL CORPORATION
DENV 77-13-P
October 10, 1978
ALJ - Final
8/80 p2054

69: 109(a)
30 CFR 77.1710(g)

963
KAISER STEEL CORPORATION
DENV 77-13-P
October 10, 1978
ALJ - Review Granted
Unbound

30 CFR 77.1710(g)

30
KAISER STEEL CORPORATION
DENV 77-13-P
May 17, 1979
RC
5/79 p343*

Operator is liable under 1969 Act for its independent contractor's violations pursuant to commission's decision in Republic Steel Corporation.

Operator's failure to require independent contractor's employee to wear safety belt when working on drilling rig mast constituted violation of 30 CFR §77.1710(g).

69: 3(d)
INDEPENDENT CONTRACTORS - Operator's Liability under 1969 Act, 5.108
30 CFR 77.1710(g)
PROTECTIVE CLOTHING - Safety Belt On Drilling Rig, 77.1710 5.108

467
KAISER STEEL CORPORATION
DENV 78-23-P
October 19, 1978
ALJ - Final
Unbound

77: 110(a)

355
KAISER STEEL CORPORATION
DENV 78-31-P
May 8, 1978
ALJ - Review Granted
Unbound

30 CFR 75.316

63
KAISER STEEL CORPORATION
DENV 78-31-P
August 3, 1979
RC
8/79 p984*

Evidence that friction and resistance to air flow increase as exhaust tubing length is increased, thereby reducing effectiveness of auxiliary exhaust fan, and that proper air flow was obtained when tubing was shortened and fan was moved closer to face supports finding that placement of fan and tubing was a cause of reduced air flow so as to establish negligence on part of operator.

Evidence that velocity of air was substantially less than airflow requirements specified in ventilation plan, and operator was aware of interrelationship between length of tubing and amount of air flow supports judge's conclusion that operator failed to exercise reasonable care to insure that required volume and velocity of air were maintained so as to establish negligence on part of operator.

30 CFR 75.316
PENALTIES - Negligence - Ventilation - Underground Coal Mines, 26.30 75.0316
30 CFR 75.316
PENALTIES - Negligence - Ventilation - Underground Coal Mines, 26.30 75.0316

1213
KAISER STEEL CORPORATION
DENV 78-39-P
July 19, 1978
ALJ - Final
Unbound*

Dismissal of citation for violation of 30 CFR 75.1002-1(a) for using nonpermissable telephones is justified when operator establishes that permissable telephones were unavailable for use in mines on day notices of violation were issued, and operator had made reasonable effort to obtain telephones which would comply with Mine Safety and Health Administration's new standards.

30 CFR 75.1002-1(a)
ELECTRICAL HAZARDS - Telephones -- Permissible Condition -- Availability of Equipment, 75.1002 37.10

271
KAISER STEEL CORPORATION
DENV 78-367-P
September 1, 1978
ALJ - Final
Unbound

30 CFR 75.1002-1(a)

259
KAISER STEEL CORPORATION
DENV 78-459-P
August 21, 1978
ALJ - Final
Unbound

77: 110(i)
77: 110(k)

1338
KAISER STEEL CORPORATION
DENV 78-512-P
May 13, 1980
ALJ - Review Granted
Unbound

30 CFR 75.301

1339
KAISER STEEL CORPORATION
DENV 78-512-P
August 4, 1980
RC - Remanding
Unbound

835
KAISER STEEL CORPORATION
DENV 78-512-P
September 9, 1980
ALJ - Review Denied
9/80 p2548*

Excessive concentration of methane can be considered in assessing civil penalty for violation of ventilation requirements of 30 CFR 75.301 because one important reason for ventilation requirement is to "dilute, render harmless, and to carry away ... noxious and harmful gases ... "

30 CFR 75.301
PENALTIES - Gravity of Violation - Ventilation - Excessive concentration of Methane, 26.50 75.0301

783
KAISER STEEL CORPORATION
DENV 79-245-PM
March 17, 1980
ALJ - Final
3/80 p708*

Tripping hazards and accumulations of encrusted materials and lubricating grease in balcony area of conveyor belt tunnels, which were not normal work areas, constituted violations of requirement under 30 CFR §§55.20-3 and 55.20-3(a) that workplaces be kept clean and orderly.

Inspector's failure to determine whether existing lighting was sufficient by conducting light meter test and determining amount of existing lighting and evidence that existing light permitted detection of any obstacles on walkways preclude finding of violation

30 CFR 55.20-3
HOUSEKEEPING - Tripping Hazards - Accumulations - Balcony of Conveyor Belt - Not A Normal Work Area, 55.20
30 CFR 55.17-1
ILLUMINATION - Amount of Lighting - Light Meter Test - Detection of Obstacles, 55.17 40.10 40.20

538
KAISER STEEL CORPORATION
DENV 79-340-P
May 25, 1979
ALJ - Final
5/79 p422

PA

96
KANAWHA COAL COMPANY
HOPE 77-193
September 4, 1979
RC - Affirmed ALJ
9/79 p1299*

Section 110(a) of Federal Coal Mine Health and Safety Act of 1969 requires Operator to compensate miners idled by withdrawal order for up to maximum of four hours of next working shift in addition to hours of next shift that they choose to work.

Remedial nature of Federal Coal Mine Health and Safety Act of 1969 requires that interest be paid on compensation awards to miners idled by withdrawal orders, even though 1969 Act does not expressly provide for interest.

69: 110(a)
COMPENSATION - Withdrawal Order - Idled Workers, 20.13
69: 110(a)
COMPENSATION - Interest on Award, 20.13 35.50

97
KANAWHA COAL COMPANY
HOPE 77-193
September 28, 1979
RC - Affirmed - RC
9/79 p1315*

(Reference Old Docket Number IBMA No. 78-7)

Miners idled by withdrawal order who refused alternative work on first four hours of shift were properly awarded four hours' compensation under §110(a) of the Federal Coal Mine Health and Safety act of 1969, since, even if miners had accepted alternative work for first four hours, alternative work was not available for final four hours.

69: 110(a)
COMPENSATION - Withdrawal Order- Idled Workers, 20.13

240
KANAWHA COAL COMPANY
HOPE 78-189-P
June 22, 1978
ALJ - Final
Unbound

30 CFR 75.400
PA

339
KANAWHA COAL COMPANY
HOPE 79-66
January 24, 1979
ALJ - Final
Unbound

77: 104(d)
30 CFR 75.200

875
KANAWHA COAL COMPANY
WEVA 80-40
June 24, 1980
ALJ - Review Granted
6/80 p1576

30 CFR 70.100(b)
69: 202(e)
69: 318(k)
77: 301(c)(2)
77: 307
77: 202(b)(2)
30 CFR 70.206

1140
KANAWHA COAL COMPANY
WEVA 80-40
October 9, 1980
RC
10/80 p2780

883
KANAWHA COAL COMPANY
WEVA 80-150
June 27, 1980
ALJ - Review Granted
6/80 p1658

30 CFR 70.206
77: 301(c)(2)
30 CFR 70.100(b)
69: 202(e)
69: 318(k)
77: 301(c)(2)
77: 307
77: 202(b)(2)

1141
KANAWHA COAL COMPANY
WEVA 80-150
October 9, 1980
RC
10/80 p2782

992
KARBER GRAVEL COMPANY, INC.
LAKE 80-110-M
September 12, 1980
ALJ - Final
9/80 p2620

30 CFR 56.12-8

435
KARST-ROBBINS COAL COMPANY
BARB 77-115-P
March 14, 1978
ALJ - Final
Unbound

30 CFR 75.604(b)
30 CFR 75.800
30 CFR 75.1403
30 CFR 75.400
30 CFR 75.1714
30 CFR 75.512
30 CFR 75.1100-3
30 CFR 75.1101
30 CFR 75.200
30 CFR 75.1100
69: 109(a)(1)

851
KELMINE CORPORATION
WEST 79-392-M
June 12, 1980
ALJ - Final
6/80 p1397

PS

650
KENNECOTT COPPER CORPORATION
DENV 79-404-PM
November 18, 1979
ALJ - Final
11/79 p1901

PA

582
KENNECOTT COPPER CORPORATION
DENV 79-457-M
August 8, 1979
ALJ - Final
8/79 p1009

29 CFR 2700.15(a) (I)
30 CFR 55.12-45

859
KENNECOTT COPPER CORPORATION
WEST 79-275-M
June 13, 1980
ALJ - Final
6/80 p1427*

Owner-operator can be held liable for safety violations committed by its independent contractors, according to Commission decision in Old Ben [1 MSHC 2177], and although policy of citing owners was interim policy, Secretary has not unduly delayed issuance of final rule permitting direct enforcement against contractors.

INDEPENDENT CONTRACTORS - Owner-Operator Liability for Violations-Delay in Issuance of Rule for Citing Contractors, 37.20

632
KENNECOTT COPPER CORPORATION, RAY MINES DIVISION
DENV 79-246-PM
October 12, 1979
ALJ - Final
10/79 p1589

PS

1209
KENNY RICHARDSON
BARB 78-600-P
March 19, 1979
US 6th Cir Court
N/A*

(Reference 6th Cir. Number 79-3059 and 81-3060)

Commission's order denying interlocutory review of administrative law judge's denial of motions to dismiss petition for assessment of civil penalty and motion to stay administrative proceedings is not reviewable by court of appeals, since order does not affirm, modify, or vacate Secretary's citation or proposed penalty or direct other relief and does not adversely affect or aggrieve operator.

JUDICIAL REVIEW - Motion to Dismiss -- Civil Penalty Assessment, 205.10

564
KENNY RICHARDSON
BARB 78-600-P
July 12, 1979
ALJ - Appealed
7/79 p874

(Reference 6th Cir. Number 79-3059 and 81-3060)

30 CFR 77.404(a)
30 CFR 77.405(a)
77: 110(c)

461
KENTLAND-ELKHORN COAL CORPORATION
PIKE 78-395
September 12, 1978
ALJ - Final
Unbound

77: 105(d)

401
KENTLAND-ELKHORN COAL CORPORATION
PIKE 78-399
March 8, 1979
ALJ - Review Granted
3/79 p89

77: 104(b)
77: 103(f)

131
KENTLAND-ELKHORN COAL CORPORATION
PIKE 78-399
November 30, 1979
RC - Appealed
11/79 p1833*

(Reference D.C. Cir. Number 79-2503 and 79-2536)

Judge's decision that right of miners' representative to walkaround pay granted by §103(f) of 1977 Act does not extend to specialized electrical inspections is affirmed since Act standing alone is ambiguous on that issue and statment of Representative in legislative history clearly evidences intention of Congress to limit walkaround pay to regular inspections.

77: 103(f)
INSPECTIONS - Miners' Representative - Walk-around Pay - Electrical Inspection - Legislative History, 22.20 5.08

829
KENTLAND-ELKHORN COAL CORPORATION
PIKE 78-399
March 21, 1980
RC - Denying Motion
4/80 p778

652
KENTLAND-ELKHORN COAL CORPORATION
PIKE 79-44-P
November 28, 1979
ALJ - Final
11/79 p1916

30 CFR 75.200
30 CFR 77.506

629
KENTUCKY BLUE COAL COMPANY
BARB 79-260-P
October 5, 1979
ALJ - Final
10/79 p1569

PA

840
KENTUCKY CARBON CORPORATION
KENT 79-142-R
May 29, 1980
ALJ - Final
6/80 p1253

77: 107(a)

1347
KENTUCKY CARBON CORPORATION
KENT 80-145-D
March 10, 1980
ALJ - Review Granted/Denied
Unbound

77: 105(c)

257
KERMIT COAL COMPANY, INC.
HOPE 77-293-P
August 3, 1978
ALJ - Final
Unbound

30 CFR 75.703
30 CFR 75.301
30 CFR 75.316
30 CFR 75.302
69: 109(a)(1)

500
KERR COAL COMPANY
DENV 78-507
April 3, 1979
ALJ - Final
4/79 p84

77: 109(a)
77: 104(b)

692
KERR-McGEE COAL CORPORATION
DENV 79-461-P
February 8, 1980
ALJ - Final
2/80 p336

1195
KERR-McGEE CORPORATION
CENT 79-156-M
October 30, 1980
ALJ - Review Granted
10/80 p3190

30 CFR 57.15-5

137
KERR-McGEE NUCLEAR CORPORATION
DENV 79-201-P
November 14, 1979
RC - Vacate & Remand
11/79 p1783*

Administrative law judge's dismissal of civil penalty proceeding is vacated since judge's written decision did not include bench decision, findings of fact, conclusions of law, or reasons or basis for them, as required by Commission Rule 65(a), 29 CFR §2700.65(a).

29 CFR 2700.65(a)
REVIEW COMMISSION PROCEDURE - Administrative Law Judge - Required Elements of Decision, 35.22

184
KERR-McGEE NUCLEAR CORPORATION
DENV 79-201-P
December 5, 1979
ALJ - Review Granted
12/79 p1995*

Secretary of Labor's contention that company violated 30 CFR §57.3-20 by failing to use timbering for ground support is rejected since standard only requires that method of support be consistent with nature of ground and gives company almost complete discretion on which type of ground support to use.

30 CFR 57.3-20
GROUND CONTROL - Timbering - Consistency with Nature of Ground - Company's Discretion, 57.03

814
KESSLER COALS, INC.
WEVA 80-38
May 6, 1980
ALJ - Final
5/80 p1060

862
KESSLER COALS, INC.
WEVA 80-159-D
June 16, 1980
ALJ - Final
6/80 p1441

77: 105(c)

1180
KESSLER COALS, INC.
WEVA 80-499
October 21, 1980
ALJ - Final
10/80 p3070

PS

199
KEYSTONE COAL MINING CORPORATION
PENN 79-24
December 28, 1979
ALJ - Final
12/79 p2154*

Citation for violation of requirement in 30 CFR §75.807 that high-voltage cables that miners pass under be guarded is vacated since storage area to which miners were going had been moved 200 feet inby unguarded cable before issuance of citation and Secretary of Labor did not present evidence as to what kind of guarding is required by standard.

30 CFR 75.807
ELECTRICAL HAZARDS - High Voltage Cables - Guards - Miners Passing under Cable, 75.0807

1265
KEYSTONE PORTLAND CEMENT COMPANY
PENN 80-25-M
November 21, 1980
ALJ - Final
11/80 p3390

30 CFR 56.12-16

873
KINCHELOE & SONS, INC.
WEST 79-377-M
June 24, 1980
ALJ - Final
6/80 p1570*

Operating unguarded self-cleaning tail pulleys which are located under cone conveyor and bunker conveyor and are 12 to 14 inches above ground does not violate 30 CFR §56.14-1, because regulation requires guarding of exposed moving machine parts only where there is danger of bodily contact.

30 CFR 56.14-1
MECHANICAL EQUIPMENT - Use of Equipment - Guarding Exposed Moving Parts, 56.14

885
KING KNOB COAL COMPANY, INC.
WEVA 79-360
June 27, 1980
ALJ - Review Granted
6/80 p1679

77: 110(a)

310
KINTZEL COAL COMPANY
WILK 78-13-P
November 13, 1978
ALJ - Final
Unbound

69: 103(b)(1)
69: 3(d)
69: 3(g)
69: 4

312
KINTZEL COAL COMPANY
WILK 78-13-P
November 24, 1978
ALJ - Amend to Dec. 11-13-78
Unbound

224
KITCHEKAN FUEL CORPORATION
HOPE 77-281
June 5, 1978
ALJ - Final
Unbound

69: 104(c)(1)
30 CFR 75.316

251
KITT COAL COMPANY, INC.
PITT 78-142-P
July 10, 1978
ALJ - Final
Unbound

PA

771
KNISELEY COAL COMPANY
CA 80-139
March 14, 1980
DISTRICT COURT
N/A*

Mine that is family-owned and family-operated is covered by provisions of Federal Mine Safety and Health Act of 1977 and is subject to federal safety inspections.

Intrastate sale of coal to power generating plant which sells some of its electricity across state lines affects interstate commerce, bringing mine from which coal is extracted within coverage of Federal Mine Safety and Health Act of 1977.

77: 103(a)
COVERAGE - Family-owned and Family-operated Mine - 1977 Act - Inspections, 5.105 5.104
COVERAGE - Interstate Commerce - Intrastate Sale of Coal to Power Plant, 5.102

964
KNOX COUNTY STONE COMPANY, INC.
DENV 79-359-PM
July 23, 1979
ALJ - Review Granted
8/80 p2134

PA

1147
L & M COAL CORPORATION
NORT 75-377
October 27, 1980
RC - Appealed
10/80 p2815*

(Reference IBMA Number 77-65 and 4th Cir. Number 80-1820)

Miner's suspension and subsequent discharge for refusal to work because operator allegedly was not following approved roof control plan was violation of discrimination clause of 1969 Coal Act, because evidence established that miner's safety complaint to Mining Enforcement and Safety Administration and MESA inspection were motive for discharge and that miner had good faith belief that operator did not intend to follow approved roof control plan, even though inspection found that operator was in compliance.

Judge's remedial order, requiring reinstatement, back pay, and attorneys' fees for miner who was discharged for engaging in activity protected by discrimination clause of 1969 Coal Act, is appropriate order of relief.

69: 110(b)(1)
DISCRIMINATION - Refusal to Work - Suspension and Discharge - Protected Activity, 30.055 30.10
69: 110(b)(1)
DISCRIMINATION - Discharge for Protected Activity - Remedies, 30.50

539
L E MURPHY CONSTRUCTION
VINC 79-38-PM
May 30, 1979
ALJ - Final
5/79 p425

PA

579
LAMBERT COAL COMPANY
NORT 79-26-P
July 31, 1979
ALJ - Final
7/79 p982

30 CFR 75.1710-1

549
LAUREL RUN MINING COMPANY
MORG 79-107-P
June 14, 1979
ALJ - Final
6/79 p535

77: 104(e)

993
LAUREL SHAFT CONSTRUCTION COMPANY, INC.
PITT 72-23
September 12, 1980
ALJ - Final
9/80 p2623*

Operator who is found to have illegally discharged employees in violation of Section 110(c) of Federal Coal Mine Health and Safety Act of 1969 cannot deduct unemployment compensation benefits received by employees during period in which damages occurred from amount of back pay owed to employees, because U.S. Supreme Court has held that state unemployment compensation benefits are not "earnings" to be deducted from back pay.

69: 110(c)
DISCRIMINATION - Remedies - Back Pay - Deduction of Unemployment Compensation Benifits, 30.50

253
LAWSON COAL COMPANY, INC.
PIKE 78-72-P
July 19, 1978
ALJ - Final
Unbound

77: 110(a)
77: 110(i)

610
LAWSON COAL COMPANY, INC.
PIKE 78-404-P
September 18, 1979
ALJ - Final
9/79 p1356

29 CFR 2700.26(c) (I)

210
LEAFCO COMPANY, INC.
BARB 78-171-P
April 25, 1978
ALJ - Final
Unbound

30 CFR 71.400
30 CFR 71.400
30 CFR 77.410
30 CFR 77.1109(c)(1)
30 CFR 77.1710(e)
30 CFR 77.1713(a)

217
LEAFCO COMPANY, INC.
BARB 78-171-P
May 11, 1978
ALJ - Final
Unbound

PA

239
LECKIE SMOKELESS COAL COMPANY
HOPE 78-129-P
June 22, 1978
ALJ - Final
Unbound

30 CFR 75.1722(c)
30 CFR 75.400

571
LEECHBURG MINING COMPANY
PITT 78-419-P
July 26, 1979
ALJ - Final
7/79 p951

PS

103
LEECHBURG MINING COMPANY
PITT 78-420-P
June 27, 1979
ALJ - Final
6/79 p632*

Operator violates 30 CFR §75.200 when row of temporary supports are six feet to six feet 10 inches from right rib and roof control plan mandates that supports be not more than five feet from rib.

Operator's criticisms of dust analysis report can only be considered as challenge to probative weight, not its admissibility as evidence in making prima facie case of violation of 30 CFR §75.403.

Operator fails to clean up accumulations of combustible materials within reasonable time in violation of 30 CFR §75.400 when regular cleanup program contemplates removal of accumulations during next mining cycle and operator terminates mining activity in area without removing accumulations.

Operator violates 30 CFR §75.400 when loose coal and oil-soaked coal dust accumulates on top of and sides of continuous miner in close proximity to source of ignition and remains for one and one-half shifts.

Operator violates 30 CFR §75.202 when fallen roof materials exist along 3,500 fee of track haulage road and operator knew history and extent of "spalling" problem in mine, even though limited inspection and removal procedures were employed.

30 CFR 75.200
ROOF CONTROL - Temporary Supports - Distance from Rib - Underground Coal Mines, 75.0200
30 CFR 75.403
ROCK DUSTING - Admissibility of dust Analysis Report - Prima Facie Case, 75.043 35.30
30 CFR 75.400
COMBUSTIBLE MATERIALS - Regular Cleanup Program - Reasonable Time - Underground Coal Mines, 75.0400
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation on Continuous Miner - Proximity to Source of Ignition - Underground Coal Mines, 75.0400
30 CFR 75.202
ROOF CONTROL - Spalling - Loose Roof Material - Track Haulage Road - Underground Coal Mines, 75.0202

477
LEECO, INC.
BARB 78-117-P
April 28, 1978
ALJ - Final
Unbound

69: 104(c)(1)
69: 109(a)(1)
30 CFR 75.200

483
LEECO, INC.
BARB 78-118-P
July 10, 1978
ALJ - Final
Unbound

69: 109(a)(1)
30 CFR 75.200

566
LEECO, INC.
BARB 78-453-P
July 18, 1979
ALJ - Final
7/79 p903

30 CFR 75.200
77: 110(i)

913
LEECO, INC.
KENT 79-112
April 14, 1980
ALJ - Review Denied
4/80 p876*

Operator violated roof-control plan required by 30 CFR §75.200 by allowing miners to work inby roofs which were only temporarily supported but which were required by plan to be permanently supported even though there was confusion as to precise meaning and application of plan.

30 CFR 75.200
ROOF SUPPORT - Application of Roof Control Plan - Confusion in Interpretation - Permanent Roof Supports Required, 75.0200

999
LESLIE COAL MINING COMPANY
KENT 79-51
September 19, 1980
ALJ - Final
9/80 p2654*

Operator violates 30 CFR 75.403, which requires that rock dust be applied so as to render areas in intake air to be at least 65 percent incombustible and areas in return air to be at least 80 percent incombustible, where sample showed only 61.6 percent incombustibility even though inspector could not prove that sample was taken in return entry, because sample showed that violation existed in any event.

Secretary fails to prove violation of 30 CFR 75.507, which requires that power connection points outby last open crosscut shall be in intake air, where air that passed over power center had to pass across two other working faces before it would be exhausted into designated return entry and there is no definition for return air that is applicable to this situation.

Operator violates 30 CFR 75.326, which provides that entries used as intake and return air courses shall be separated from belt haulage entries, where intake and return air courses were not separated adequately; one stopping was missing between two entries which would have permitted return air carrying methane to get upon belt entry, where electrical components existed, so that explosion might occur.

30 CFR 75.403
ROCK DUSTING - Incombustible Content - Type of Entry, 75.403
30 CFR 75.507
ELECTRICAL HAZARDS - Power Connection Points - Requirement of Location in Intake Air, 75.507
30 CFR 75.326
VENTILATION - Air Courses - Adequate Seperation, 75.0326

1063
LESLIE COAL MINING COMPANY
KENT 80-3-D
August 27, 1980
ALJ - Final
8/80 p2358*

Operator violates Section 105(c)(1) of Federal Mine Safety and Health Act of 1977 which prohibits operators from discriminating against miners who refuse to work under dangerous conditions, when miner is suspended with intent to discharge after refusing to do work which he believed violated roof-control plan and because he believed proper ventilation could not be provided in area.

77: 105(c)(1)
DISCRIMINATION - Refusal to Work Under Dangerous Conditions - Suspension with Intent to Discharge, 30.055

197
LESLIE COAL MINING COMPANY
PIKE 78-400
December 12, 1979
ALJ - Final
12/79 p2022*

(Reference Docket Number 79-90-P, and 79-91-P)

Company's refusal to allow miners' representative to accompany MSHA inspectors on inspection because representative had been suspended from work on day of inspection constituted violation of §103(f) of 1977 Act.

77: 103(f)
INSPECTION - Miners' Representative - Suspension from work - Right to Accompany Inspectors, 22.20

1089
LITTLE BILL COAL COMPANY, INC.
KENT 79-261
July 14, 1980
ALJ - Review Denied
Unbound

1272
LITTLE BILL COAL COMPANY, INC.
KENT 80-203
November 25, 1980
ALJ - Final
11/80 p3419

1303
LITTLE BILL COAL COMPANY, INC.
PIKE 78-308-P
December 17, 1980
ALJ - Final
12/80 p3634*

Operator violates 30 CFR 75.807 (high-voltage cables shall be guarded) when cable, transmitting power to transformer, was looped beside transformer and found lying on mine floor where miner could have stepped over it; fact that tranformer filled up most of entry when cable was attached and that operator's witness was not afraid to step over cable and handle it with gloves does not justify operator's failure to guard cable or place it in less hazardous position.

Operator violates 30 CFR 75.326 when holes ranging from one-third inch to two inches in length are found in three permanent stoppings; argument that holes did not extend through blocks is rejected because light check was not made to see if light passed through stoppings.

Operator violates 30 CFR 75.400 when coal dust is present along entries of three conveyor belts, on roof, ribs, floor, timbers, and belt structures and extends for distance of 400 feet and is nine inches in depth; fact that operator cleaned up coal once a week does not ameliorate fact that violation existed.

Operator violates 30 CFR 75.503 when headlights are found to be inoperative on both ends of shuttle car; operator's argument that headlights should not be used since headlights of shuttle cars glare in eyes of continuous-mining machine operator is rejected because operator of shuttle car can turn off light on end next to continuous-mining machine when coal is loaded in shuttle car.

30 CFR 75.807
ELECTRICAL HAZARDS - High-Voltage Cables - Guards, 75.0807
30 CFR 75.326
VENTILATION - Return Air Courses - Separation from Belt Haulage Entries - Holes in Stoppings, 75.0326
30 CFR 75.400
COMBUSTIBLE MATERIALS - Coal Dust Accumulation, 75.0400
30 CFR 75.503
ELECTRICAL EQUIPMENT - Electric Face Equipment - Maintenance of Headlights, 75.053
30 CFR 75.200
30 CFR 75.507
30 CFR 75.1725
30 CFR 75.1605(k)
30 CFR 75.604
30 CFR 75.316
30 CFR 75.1605(a)

1304
LITTLE BILL COAL COMPANY, INC.
PIKE 78-308-P
December 17, 1980
ALJ - Final
12/80 p3634

30 CFR 75.1101-1
30 CFR 75.1100-2
30 CFR 75.1102
30 CFR 75.516-2
30 CFR 75.326
30 CFR 75.601
30 CFR 75.1722(b)

222
LITTLE BILL COAL COMPANY, INC.
PIKE 78-337-P
May 30, 1978
ALJ - Final
Unbound

1310
LITTLE EGYPT COAL COMPANY
VA 80-85
December 18, 1980
ALJ - Final
12/80 p3721*

Accumulation of dry, loose coal which is approximately four feet high, 20 feet wide, and 60 feet long outby survey station in entry intake airway, adjacent to belt entry, violates requirement of 30 CFR 75.400 that loose coal shall not be permitted to accumulate in active workings.

Operator violates requirements of 30 CFR 75.200 by failing to comply with its approved roof-control) plan that requires roof bolt holes to be drilled at intervals not to exceed 15 feet because, for distance of 300 feet, roof-bolt test holes had not been drilled at 15-foot intervals.

Operator violates requirements of 30 CFR 75.200 (compliance with approved roof-control plan when mine entry of 24 to 28 feet wide is found and approved roof control plan permits maximum width of 20 feet; overwide entry could result in weakened roof and possible roof fall.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Dry Loose Coal - Accumulation, 75.0400
30 CFR 75.200
ROOF SUPPORT - Roof-Bolt Test Holes - Intervals, 75.0200
30 CFR 75.200
MINE ENTRY - Approved Width, 75.0200

1217
LITTLE T COAL COMPANY
SE 79-119-D
June 27, 1980
ALJ - Review Denied/Appealed
Unbound*

(Reference 6th Cir. Number 80-3529)

Order to show cause served on company makes it clear that response to discrimination complaint is required, so that company's agent's action of orally communicating answer does not constitute good cause for failure to file an answer and is not grounds for setting aside default judgement entered against company.

Service of process upon mine superintendent is valid, according to Federal Rules of Civil Procedure which provide that service upon agent authorized to receive process is not necessary if service is directed to "an officer, a managing or general agent" of company, because mine superintendent holds position calling for exercise of judgement and discretion on company's behalf, and he could reasonably be expected to apprise company counsel of action.

REVIEW COMMISSION PROCEDURE - Response to Initial Filing - Knowledge of Need to Respond - Oral Answer, 35.111 30.01
REVIEW COMMISSION PROCEDURE - Initial Filing - Service of Process of Mine Superintendent, 35.101

927
LONE STAR INDUSTRIES, INC.
VA 79-83-M
May 5, 1980
ALJ - Final
5/80 p1050*

Catwalk which is elevated above water at some time and is primarily used as loading dock but also used as passageway for workers qualifies as "elevated walkway" for purposes of 30 CFR 56.11-2 so that operator's failure to provide handrails for full length of catwalk violates regulation.

30 CFR 56.11-2
TRAVELWAYS - Elevated Walkways - Handrails, 56.11

928
LONE STAR INDUSTRIES, INC.
VA 79-83-M
May 30, 1980
ALJ - Correction
5/80 p1055

1276
LONE STAR INDUSTRIES, INC.
VA 80-67-M
November 28, 1980
ALJ - Review Granted
11/80 p3440

30 CFR 56.9-41

104
LONE STAR INDUSTRIES, INC.
VINC 79-21-PM
July 3, 1979
ALJ - Final
7/79 p809*

Operator cannot be held accountable to nebulous MSHA memo interpreting 30 CFR §56.14-1 that is not communicated to operator; operator's compliance responsibility is limited to language of 30 CFR §56.14-1.

Inspector's erroneous determination that guard on pinch points was adequate relieves operator of compliance with different interpretation of 30 CFR §56.14-1 when inspector abates citation and operator relies on inspector's judgement.

30 CFR 56.14-1
MECHANICAL EQUIPMENT - Guards on Pinch Points - Interpretative Memo - Sand and Gravel Operations, 56.14 40.30
30 CFR 56.14-1
MECHANICAL EQUIPMENT - Guards on Pinch Points - Responsibility to Comply - Sand and Gravel Operations, 56.14

1248
LONE STAR STEEL COMPANY
DENV 79-291-PM
November 14, 1980
ALJ - Review Denied
11/80 p3282

30 CFR 50.10
30 CFR 55.55-5(sic)
30 CFR 55.15-5

726
LUNAR MINING COMPANY
PENN 79-160
March 19, 1980
ALJ - Final
3/80 p732

30 CFR 75.250
30 CFR 75.313

609
M & E COAL COMPANY
PIKE 78-331-P
September 18, 1979
ALJ - Final
9/79 p1354

29 CFR 2700.26(c) (I)

653
MABEN ENERGY CORPORATION
WEVA 79-123-R
November 30, 1979
ALJ - Review Granted
11/79 p1942

77: 104(a)
30 CFR 77.216-3(a)

651
MADISON GRANITE COMPANY
DENV 79-114-PM
November 28, 1979
ALJ - Final
11/79 p1906

30 CFR 55.12-28
30 CFR 55.15-2
30 CFR 55.9-7

1161
MADISON GRANITE COMPANY
WEST 79-323-M
October 14, 1980
ALJ - Final
10/80 p2920

400
MAGMA COPPER COMPANY
DENV 78-533-M
March 8, 1979
ALJ - Appealed
3/79 p81

77: 104(b)
77: 103(f)

41
MAGMA COPPER COMPANY
DENV 78-533-M
June 19, 1979
RC
Not Printed*

United Mine Workers' motion to intervene was improperly granted since it was acted upon prior to receipt of brief in opposition filed by operator within time allowed; upon further consideration, motion to intervene is denied because United Mine Workers do not represent any affected miners.

REVIEW COMMISSION PROCEDURE - Motion to Intervene - Representation of Miners, 35.04

130
MAGMA COPPER COMPANY
DENV 78-533-M
December 10, 1979
RC - Appealed
12/79 p1948*

(Reference 9th Cir. Number 79-7687)

One miners' representative in each inspection party must be paid for time spent accompanying inspector who is engaged in inspection of mine under §103(a) of 1977 Act, since limitation of walkaround pay to only one miners' representative regardless of number of inspection parties would frustrate Congressional purpose of improving thoroughness of mine inspection and level of miner safety consciousness.

77: 103(a)
INSPECTIONS - Miners' Representative - Walk-around Pay - Two or More Inspection Parties - Legislative History, 22.20 5.08

88
MAGMA COPPER COMPANY
DENV 78-574-PM
July 3, 1979
ALJ - Review Dismissed
7/79 p837*

Evidence that workers immersed bare hands in solvent which, according to manufacturer's label, may cause skin irritation, and that protective gloves were not provided or used, establishes violation of 30 CFR §57.15-6

Secretary's failure to determine by testing, flash point of allegedly combustible liquid, requires vacation of citation for violation of 30 CFR §57.4-2 for failure to post sign warning against smoking or open flame.

Raised platform on head frame above mine shaft is not "travelway" within definition at 30 CFR §57.2 and standard at 30 CFR §57.11-12 requiring guarding of openings near travelways is not applicable to such platform.

30 CFR 57.15-6
PERSONAL PROTECTION - Hands - Immersion in Solvent, 57.15
30 CFR 57.4-2
FIRE PROTECTION - Combustible Liquid - Warning Sign, 57.04
30 CFR 57.2 30 CFR 57.11-12
TRAVELWAYS - Raised Platform - Applicability of Standard, 57.11 57.02

585
MAGMA COPPER COMPANY
DENV 79-320-PM
August 9, 1979
ALJ - Final
8/79 p1015

30 CFR 57.14-1
30 CFR 57.20-3
30 CFR 57.12-32

108
MAGMA COPPER COMPANY
DENV 79-433-PM
September 14, 1979
ALJ - Review Denied - Appealed
Not Printed*

(Reference 9th Cir. Number 79-7535)

Evidence established a violation of 30 CFR §57.14-1 where exposed drive shaft and coupling presented danger of contact by persons and subsequent injury.

Although wider walkway existed on west side of belt, area with accumulation on east side of belt constituted passageway and violation of 30 CFR §57.20-3 where area was available for transit from one end of beltway to other, was only way to reach east side of beltway, and was used by workers.

Where cover plates were not present on brake release switches for over a month, fact that brake release switches were located in hoist pit inaccessible from surface does not affect finding of violation of 30 CFR §57.12-32.

30 CFR 57.14-1
MECHANICAL EQUIPMENT - Exposed Machinery - Guards - Underground Metal/Nonmetal Mines, 57.14
30 CFR 57.20-3
HOUSEKEEPING - Maintenance of Passageways - Underground Metal/Nonmetal Mines, 57.20
30 CFR 57.12-32
ELECTRICAL HAZARDS - Cover Plates - Exposed Brake Release Switches - Underground Metal/Nonmetal Mines, 57.12

1282
MAGMA COPPER COMPANY
DENV 79-433-PM
December 18, 1980
US Appeals 9th Cir
N/A*

(Reference 9th Cir. Number 79-7535)

Determination by Federal Mine Safety and Health Review Commission that aisle is passageway within meaning of 30 CFR 57.20-3 is affirmed because such determination has been specifically delegated to Commission's specialized knowledge and is entitled to deference, and substantial evidence supports Commission's finding.

30 CFR 57.20-3
JUDICIAL REVIEW - Commission Order - Deference to Specialized Knowledge - Substantial Evidence, 205.10
57.20

730
MAGMA COPPER COMPANY
DENV 79-452-PM
March 26, 1980
ALJ - Final
3/80 p744

PA

678
MARBLEHEAD LIME COMPANY
PENN 79-36-M
January 15, 1980
ALJ - Final
1/80 p48

PS

877
MARGIN COAL COMPANY, INC.
KENT 79-149
June 25, 1980
ALJ - Final
6/80 p1608

77: 110(i)

850
MARSHFIELD SAND & GRAVEL, INC.
YORK 79-68-M
June 10, 1980
ALJ - Final
6/80 p1391*

Use of front-end loader to lubricate screw conveyor instead of approved bucket truck violates 30 CFR §56.11-1, which requires that safe means of access be provided and maintained to all working places, because use of front-end loader presents hazards not presented by bucket truck, including danger of dropping in event of hose failure.

Operator violates 30 CFR §56.14-35 when employee attempts to grease screw conveyor while it is in operation as regulation specifically prohibits lubrication of machinery while it is in motion.

When violations of safety standards occur because of aberrational and unpredictable actions of safety director, negligence of safety director will not be imputed to operator.

30 CFR 56.11-1
TRAVELWAYS - Safe Means of Access - Use of Equipment, 56.11
30 CFR 56.14
EQUIPMENT - Lubrication of Machinery While in Motion, 56.14
77: 110(a)
DEFENSES - Negligence of Safety Director - Aberrational Conduct - Not Imputed to Operator, 37.25

1028
MARTIN MARIETTA AGGREGATES
CENT 79-171-M
July 16, 1980
ALJ - Final
7/80 p1834

PA

1043
MARTIN MARIETTA AGGREGATES CENTRAL DIVISION
CENT 79-90-M
August 7, 1980
ALJ - Final
8/80 p2163*

Operator's maintenance facility, which is used for purpose of maintaining mining equipment, falls within definition of "coal or other mine" as term is defined by Federal Mine Safety and Health Act of 1977, and is covered by Act, even though maintenace facility is not located at actual mining site because facility is structure directly related to and used in mining operation.

Operator violates 30 CFR 56.14-29 when mechanic is found working on front-end loader with power on and with safety bars unattached because regulation requires that repairs shall not be performed on machinery until power is off and machinery is blocked against motion.

30 CFR 56.14-29
COVERAGE OF ACT - Maintenance Facility - Location, 5.106
30 CFR 56.14-29
EQUIPMENT - Repair of Machinery - Power Turned Off - Machinery Blocked Against Motion, 56.14

1018
MARTIN MARIETTA CORPORATION
SE 80-24-DM
June 19, 1980
ALJ - Review Granted
7/80 p1706

77: 105(c)
29 CFR 2700.43

1017
MARTIN MARIETTA CORPORATION
SE 80-24-DM
July 29, 1980
RC - Remanding
7/80 p1702

410
MARY BETH COAL COMPANY
BARB 79-113-P
March 30, 1979
ALJ - Final
3/79 p209

29 CFR 2700.26 (I)
FA

69
MASSEY SAND & ROCK COMPANY
DENV 78-575-PM
June 18, 1979
ALJ - Review Denied
6/79 p545*

Citations for violations of 30 CFR §56.14-1 are vacated since there is no evidence that pinch points beneath skirt boards of conveyors were readily accessible to someone walking or working so as to require guards to prevent injury.

Interpretative memorandum issued to MSHA personnel but not operators is not mandatory standard and is not binding on operator, particularly when there is no evidence that operator was aware of it.

30 CFR 56.14-1
MECHANICAL EQUIPMENT Conveyors - Skirt Boards - Sand and Gravel Operations, 56.14
STANDARDS - Administrative Interpretation - Internal Memorandum, 40.30

938
MATHIES COAL COMPANY
PENN 79-149-R
May 21, 1980
ALJ - Final
6/80 p1246*

MSHA's conducting smoke cloud test to calculate air velocities inside mine is valid method of determining whether operator is following approved ventilation plan as required by 30 CFR §75.316 when inspector is unable to obtain satisfactory reading on anemometer because of insufficient air velocity.

30 CFR 75.316
VENTILATION - Ventilation Plan - Use of Smoke Cloud Test, 75.0316

1314
MATHIES COAL COMPANY
PENN 80-277
December 30, 1980
ALJ - Final
12/80 p3740

30 CFR 75.200

1185
MATHIES COAL COMPANY
PENN 80-319-R
October 27, 1980
ALJ - Final
10/80 p3123

213
MATHIES COAL COMPANY
PITT 77-39-P
May 5, 1978
ALJ - Final
Unbound

69: 109(a)(1)
30 CFR 75.200
30 CFR 100.8
69: 104(e)
69: 104(f)

525
MATHIES COAL COMPANY
PITT 79-121-P
April 30, 1979
ALJ - Final
4/79 p289

665
MATHIES COAL COMPANY
PITT 79-132-P
December 28, 1979
ALJ - Final
12/79 p2124

PS

1309
MAUDLIN CONSTRUCTION COMPANY
CENT 80-114-M
December 18, 1980
ALJ - Final
12/80 p3712*

Citation issued for violation of 30 CFR 56.5-50 (impermissible noise exposure) is vacated when dosimeter used for noise level test was calibrated 27 days before test was performed; dosimeter is very sensitive piece of equipment easily affected by temperature changes, movement, and other outside influences.

Operator violated 30 CFR 56.9-2 (equipment defects shall be corrected) because backup alarm of front end loader was inoperative, and fact that alarm was installed as additional safety feature and was not required by Act does not preclude application of standard where evidence shows that use of alarm affected safety.

30 CFR 56.5-50
NOISE - Testing Noise Levels - Calibration of Dosimeter,
30 CFR 56.9-2
HAULAGE - Front End Loader - Inoperative Backup Alarm,
77: 110(i)1

1308
MAUMEE HAULERS & EXCAVATORS
LAKE 80-192-M
December 18, 1980
ALJ - Final
12/80 p3708*

Part-owner of family-owned and family-operated mine, who operates crane, is "miner" within meaning of Federal Mine Safety and Health Act since Act's definition of "miner" includes any individual working in mine, not just employees.

Federal Mine Safety and Health Act does not apply to machine which was out of service and in inoperable condition at time inspector issued citation; therefore citation is vacated.

77: 3(g)
COVERAGE - Part Owner as "miner" Under Act, 5.105
30 CFR 56.11-2 30 CFR 50.9-11
COVERAGE - Equipment Used in Mine, 5.10 5.106

1197
MCCOY ELKHORN COAL CORPORATION
KENT 80-243-R
October 31, 1980
ALJ - Final
10/80 p3196*

Accumulation of combustible materials exists and violates standard, 30 CFR 75.400, when one-half inch of oil and grease remains on motor of cutting machine due to operator's failure to remove 40 percent of cited accumulation.

Inspector acted reasonably in issuing withdrawal order under Section 104(b) of 1977 Act for failure to abate violation of accumulation standard, 30 CFR 74.400, instead of extending time for compliance because safety director and section foreman thought machine was "okay", did not offer to have additional cleaning done, did not explain why machine had not been properly cleaned, and did not ask for extension of time to perform additional cleaning.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation of Oil and Grease - Motor of Cutting Machine, 75.0400
77: 104(b)
WITHDRAWAL ORDERS - Failure to Abate - Reasonableness of Order, 24.10

832
MEDUSA CEMENT COMPANY
SE 79-27-M
April 8, 1980
ALJ - Final
4/80 P819*

Inspector's expert testimony as to inadequacy of truck brakes after they had been tested by placing foot on brakes and then applying acceleration to truck is sufficient to establish prima facie case of violation of requirement of 30 CFR §56.9-3 of 1977 Act that powered mobile equipment be provided with adequate brakes.

30 CFR 56.9-3
HAULAGE - Brakes on Truck - Test for Adequacy - Expert Testimony - Prima Facie Case, 56.09

932
MEDUSA CEMENT COMPANY
SE 79-75
May 15, 1980
ALJ - Final
5/80 p1105*

Badly worn steering control arm block on road grader does not violate provision of 30 CFR §56.9-2, which requires that "Equipment defects affecting safety shall be corrected before equipment is used," if it cannot be established that worn control arm was defective to point where it presented real safety hazard, as worn part, in and of itself, does not always affect safety.

30 CFR 56.9-2
HAULAGE - Equipment Defects - Worn Parts - Evidence, 56.09

1323
MEREDITH MINING COMPANY, INC.
79-1715
January 28, 1980
DISTRICT COURT
N/A*

Operator that sells coal intrastate to company that trades in interstate market is covered by 1977 Act because, through sale of coal to interstate company, operator "affects commerce" and its mere presence in intrastate market affects price and supply of coal in interstate market.

Preliminary injuction against operator barring it from continuing operations of its mine until certain conditions are corrected is appropriate since operator committed violations of 1977 Act and failed to comply with withdrawal orders issued under Act.

COVERAGE - Commerce - Intrastate Market - Interstate Market, 5.102
INJUNCTIONS - Violations of 1977 Act - Noncompliance with Withdrawal Orders, 201.12

986
MICHAEL JILES
WEVA 80-59
September 11, 1980
ALJ - Final
9/80 p2570

30 CFR 75.200
30 CFR 75.316

147
MID-CONTINENT COAL & COKE COMPANY
DENV 79-29-P
October 1, 1979
ALJ - Appealed
10/79 p1501*

Frayed wire cable on airlock door that would not pass through pulley system used in lifting door and missing "keys" in griphoist cranking lever used to raise airlock door constituted violation of 30 CFR §75.1725(a), which requires that mobile and stationary equipment be maintained in safe operating condition.

30 CFR 75.1725(a)
MECHANICAL EQUIPMENT - Airlock Door - Frayed Wire Cable - Missing "Keys" in Cranking Lever, 75.1725

1348
MID-CONTINENT COAL & COKE COMPANY
DENV 79-29-P
November 8, 1979
RC - Denying Review/Appealed
Unpublished

(Reference 10th Cir. Number 79-2271)

592
MID-OHIO MINING COMPANY
VINC 79-184
November 8, 1979
ALJ - Final
8/79 p1086

77: 105(c)(3)

939
MIDDLE KENTUCKY CONSTRUCTION, INC.
KENT 79-7
May 22, 1980
ALJ - Final
5/80 p1137*

Term "suitable protective footwear" as required by 30 CFR §77.1710(e) must be interpreted in accordance with job that miner is doing so that mechanic or maintenance man must wear steel-toed shoes, as it is probable something might fall and crush his feet.

30 CFR 77.1710(e)
PROTECTIVE CLOTHING - Suitable Protective Footwear - Interpretation, 77.1710

990
MIDDLE KENTUCKY CONSTRUCTION, INC.
KENT 80-92
September 12, 1980
ALJ - Final
9/80 p2589*

Explosives truck which has inoperable horn, parking brakes, and service brakes violates provisions of 30 CFR 77.1605(d) and (b), and operator's defense that truck was removed from service prior to inspection must be rejected when evidence established that cited truck was left in drill area and nothing but oral instructions prevented actual use of equipment.

Operator violates provisions of 30 CFR 77.1605(b) when parking brakes on front-end loader are inoperable, and operator's evidence as to how emergency brake system functioned is irrelevant because it is clear that term "parking brake" as used in standard refers to braking system that is separate and independent from service and emergency brakes on loader.

30 CFR 77.1605(d)
HAULAGE - Mobile Equipment - Adequacy of Brakes and Horn - Removal of Defective Truck From Service, 77.1605
30 CFR 77.1605(b)
HAULAGE - Mobile Equipment - Parking Brakes - Emergency Brakes, 77.1605

821
MISSOURI GRAVEL COMPANY
LAKE 80-15-M
May 22, 1980
ALJ - Final
5/80 p1124

PS

1025
MISSOURI GRAVEL COMPANY
LAKE 80-83-M
July 8, 1980
ALJ - Review Granted
7/80 p1792

30 CFR 56.14-1

454
MOBILE PREMIX CONCRETE, INC.
DENV 78-469-M
July 24, 1978
ALJ - Final
Unbound

77: 105(d)

353
MONTEREY COAL COMPANY
HOPE 78-469
February 15, 1979
ALJ - Review Granted
Unbound

77: 104(d)(1)

133
MONTEREY COAL COMPANY
HOPE 78-469
November 13, 1979
RC - Reverse & Remand/Appealed
11/79 p1781

(Reference 4th Cir. Number 79-1827)

1229
MONTEREY COAL COMPANY
HOPE 78-469
November 17, 1980
US 4th Cir Court - w/o prej.
N/A*

(Reference 4th Cir. Number 27-1827)

Operator's petition for review of order of Federal Mine Safety and Health Review Commision, which reversed judge's decision that operator was unjustifiedly cited instead of independent contractor and which remanded case to judge, is dismissed as premature, because remand order is not reviewable final order and operator has not exhausted its administrative remedies.

JUDICIAL REVIEW - Commission Remand Order - Nonfinal Order - Premature Appeal, 205.10

1088
MONTEREY COAL COMPANY
LAKE 80-185-R
August 13, 1980
ALJ - Review Denied
Unbound

1202
MONTEREY COAL COMPANY
Lake 80-185-R
August 13, 1980
RC - Denying Review
Unbound

499
MONTEREY COAL COMPANY
VINC 78-38
April 3, 1979
ALJ - Review Granted
4/79 p69

69: 110(b)

233
MONTEREY COAL COMPANY
VINC 78-372
June 19, 1978
ALJ - Final
Unbound

77: 105(d)
77: 105(a)

446
MONTEREY COAL COMPANY
VINC 78-416
July 17, 1978
ALJ - Review Granted
Unbound

77: 105(d)

15
MONTEREY COAL COMPANY
VINC 78-416
May 1, 1979
RC - Reverse & Remand
5/79 p325

734
MONTEREY COAL COMPANY
WEVA 80-64
March 31, 1980
ALJ - Final
3/80 p761

77: 3(d)

874
MORTON BROTHERS
CENT 79-3-M
June 24, 1980
ALJ - Final
6/80 P1572

PS

49
MORTON SALT COMPANY
DENV 79-161-PM
June 4, 1979
RC
Unbound*

Petition for review of adminstrative law judge's order dismissing petition for penalty assessment for three out of four citations and setting hearing for fourth citation is premature, since order does not constitute judge's final disposition of proceedings.

REVIEW COMMISSION PROCEDURE - Premature Petition - No Final Disposition, 35.24

849
MORTON SALT DIV., MORTON-NORWICH PRODUCTS, INC
CENT 79-48-M
June 10, 1980
ALJ - Final
6/80 p1381*

(Reference DEVN 79-161-PM)

Owner-operator can be held liable for violations of safety standards committed by its independent contractors, according to present enforcement policy of Mine Safety and Health Administration.

INDEPENDENT CONTRACTORS - Liability of Owner-Operator, 37.20

1079
MORTON SALT DIV., MORTON-NORWICH PRODUCTS, INC.
CENT 80-59-M
April 14, 1980
ALJ - Review Denied
Unbound

1291
MOUNTAIN ENERGY, INC.
SE 80-5
December 9, 1980
ALJ - Final
12/80 p3558

30 CFR 75.1100-2

563
MOUNTAIN TOP FUEL, INC.
KENT 79-161-D
July 3, 1979
ALJ - Appealed & Dismissed
7/79 p862

77: 105(c)

822
MOUNTAIN TOP FUEL, INC.
KENT 79-161-D
May 22, 1980
ALJ - Denied/Appld/Dismsd
5/80 p1126*

(Reference 6th Cir. Number 79-1306)

Dismissal of complaint of discriminatory discharge pursuant to §105(c)(1) of Federal Mine Safety and Health Act of 1977 is justified when there is insufficient evidence to support finding that operator knew miner had made safety complaint and thus discharged him, and there is sufficient evidence that miner was discharged for inadequately performing his work.

Employer's refusal to comply with order of temporary reinstatement constitutes violation of §105(c)(1) of Federal Mine Safety and Health Act of 1977 and justifies assessment of penalty, even though complaint of discriminatory discharge against employer was dismissed.

77: 105(c)(1)
DISCRIMINATION - Protected Activity - Safety Complaint - Grounds for Discharge - Evidence, 30.053 30.10
77: 105(c)(1)
PENALTIES - Refusal to Comply with Order, 26.03 30.01

1159
MULLIN CREEK COAL COMPANY, INC.
KENT 80-102-D
October 10, 1980
ALJ - Final
10/80 p2907

77: 105(c)(1)

974
MULZER CRUSHED STONE COMPANY
LAKE 80-57-M
September 3, 1980
ALJ - Review Granted
9/80 p2497

30 CFR 57.6-177
30 CFR 57.20-20

972
MULZER CRUSHED STONE COMPANY
LAKE 80-201-M
September 29, 1980
RC - Remanding
9/80 p2484

1152
MULZER CRUSHED STONE COMPANY
LAKE 80-201-M
October 6, 1980
ALJ - Review Denied
10/80 p2851

480
MULZER CRUSHED STONE COMPANY
VINC 78-3-P
April 28, 1978
ALJ - Final
Unbound

69: 109(a)
30 CFR 77.1710(e)
30 CFR 77.1109(c)(1)
30 CFR 77.410
30 CFR 77.1110

202
McCORMICK SAND CORPORATION
LAKE 79-80-RM
January 11, 1980
ALJ - Final
1/80 p21*

(Reference Docket Number 79-81-RM)

Operator's failure to have continuous metallic grounding conductor did not violate 30 CFR §56.12-25 becuase standard requires only a "ground," and does not mandate any particular ground such as "continuous" conductor.

30 CFR 56.12-25
ELECTRICAL HAZARDS - Metallic Grounding Conductor - "Continuous", 56.12

823
McCOY ELKHORN COAL CORPORATION
KENT 80-122-R
May 22, 1980
ALJ - Final
5/80 p1143*

Dismissal of withdrawal order issued pursuant to §107(a) of Federal Mine Safety and Health Act of 1977 is justified when inspector issued order for alleged violation of 30 CFR §75.703 for defectively grounded cable on shuttle car, because at time order was issued, there was no imminent danger because car was de-energized.

30 CFR 75.703
IMMINENT DANGER - Timing of Order, 24.50 75.0703
77: 107(a)

450
N & G CONSTRUCTION, INC.
VINC 78-385
October 13, 1978
ALJ - Final
Unbound

30 CFR 77.403(a)

1170
N A DAGERSTROM, INC.
WEST 80-363-M
October 17, 1980
ALJ - Final
10/80 p3005

1177
N L INDUSTRIES, INC.
YORK 79-9-M
October 20, 1980
ALJ - Final
10/80 p3040

30 CFR 55.5-5
30 CFR 55.14-1
30 CFR 55.9-2

1196
NACCO MINING COMPANY
LAKE 80-290
October 31, 1980
ALJ - Review Granted
10/80 p3194

30 CFR 75.316

214
NACCO MINING COMPANY
VINC 78-22
May 8, 1978
ALJ - Final
Unbound

69: 104(c)(2)
30 CFR 75.1722(b)

1334
NACCO MINING COMPANY
VINC 78-78-P
January 29, 1979
ALJ - Final
Unbound

30 CFR 75.400

1293
NATIONAL LIME & STONE COMPANY
VINC 79-99-PM
December 9, 1980
ALJ - Final
12/80 p3572*

Disconnection and deenergization of electrical circuit box at point where cable enters top of box, where it is connected to first fuse inside box, constitutes deenergization of only portion of circuit. However, lockout of box at main plant power switch is needed to deenergize entire circuit.

Operator violates requirements of 30 CFR 56.12-36 when fuses in electrical circuit box are removed by hand; maintenance of built-in safety features of box does not excuse operator from requirement that fuses shall be removed by equipment and techniques especially designed to prevent electrical shock, since box is not failsafe device and could malfunction.

30 CFR 56.12-37
ELECTRICAL HAZARDS - Deenergization of Electrical Circut Box - Failure to Lockout, 56.12
30 CFR 56.12-36
ELECTRICAL HAZARDS - Removal of Fuses From Energized Circut - Use of Hands, 56.12

1198
NATIONAL MINES CORPORATION
KENT 79-345-D
October 24, 1980
RC
Not Printed*

Judge's dispositions, which found operator in default and found that operator discriminated against miner, but which directed parties to confer in order to stipulate amount of back wages due and amount of costs and expenses incurred, were not orders which finally disposed of proceedings and did not initiate running of statutory review period; accordingly, operator's petition for discretionary review is denied as premature.

29 CFR 2700.65(a)
COMMISSION PROCEDURE - Premature Petition for Review - Finality of Judge's Dispositions, 35.24

1267
NATIONAL MINES CORPORATION
KENT 79-345-D
November 24, 1980
ALJ - Review Denied/Appealed
11/80 p3397

(Reference 6th Cir. Number 81-3052)

987
NATIONAL MINES CORPORATION
KENT 80-130-R
September 11, 1980
ALJ - Review Denied/Appealed
9/80 p2576

(Reference D.C. Cir. Number 80-2406)

77: 103(f)

543
NEW HAVEN TRAP ROCK-TOMASSO
WILK 79-63-PM
June 5, 1979
ALJ - Final
6/79 p504

30 CFR 100
PA

630
NEW HAVEN TRAP ROCK-TOMASSO
WILK 79-160-PM
October 5, 1979
ALJ - Final
10/79 p1571

PS

1082
NEW JERSEY PULVERIZING COMPANY
YORK 79-94-M
May 16, 1980
ALJ - Review Granted
Unbound

1130
NEW JERSEY PULVERIZING COMPANY
YORK 79-94-M
July 2, 1980
RC
7/80 p1686*

Administrative law judge erred in reviewing and assessing lower penalties than those proposed by Secretary without according Secretary right to be heard, and judge lacked jurisdiction to reserve right to reconsider assessment upon request.

29 CFR 2700.65(c)
REVIEW COMMISSION PROCEDURE - Assessment of Penalties - Contested Issue - Right to Hearing, 35.22 26.05

1047
NEW JERSEY PULVERIZING COMPANY
YORK 79-94-M
August 8, 1980
ALJ - Final
8/80 p2186

29 CFR 2700.65(c)

580
NEW JERSEY ZINC COMPANY
WILK 79-59-PM
August 7, 1979
ALJ - Final
8/79 p999

PS

1091
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
YORK 79-21-M
July 3, 1980
ALJ - Final
7/80 p1749*

Sand or gravel pits from which materials are extracted for their intrinsic abrasive qualties and not for fill materials and pit at which materials are put through "sizing" process do not fall within category of "borrow pit," so that pits are subject to coverage of Federal Mine Safety and Health Act between MSHA and Occupational Safety and Health Administration states that only borrow pits are subject to OSHA jurisdiction.

Federal Mine Safety and Health Review Commission does not have jurisdiction to pass on constitutionality of Federal Mine Safety and Health Act of 1977, but it does have jurisdiction to determine whether Act may be constitutionally applied to facts of specific case.

Tenth Amendment to U. S. Constitution does not prevent enforcement of Federal Mine Safety and Health Act against state-owned sand and gravel mining operations which are used for purposes of road maintenance, because mining sand and gravel is not traditional governmental function and may be regulated even if operated to facilitate traditional state functions.

Sand and gravel pit, which is operated by state and whose products are used only by state and are not sold, affects commerce and falls within coverage of Mine Safety and Health Act, because if state did not operate pits it would have to obtain its sand and gravel in open market.

Citation for violation of 30 CFR §56.18-10 which requires that first aid training be made available to all interested employees must be vacated when evidence establishes only that none of employees at time of inspection had current first aid card, and there is no evidence concerning availability of first aid training to other employees.

Operator violates 30 CFR §56.14-1, which requires guarding of exposed moving machine parts which may cause physical injury if contacted, when there are exposed idler rollers on conveyor belt which left exposed pinch point which could result in physical injury.

COVERAGE OF ACT - Jurisdiction over Sand and Gravel Pits - Borrow Pits - Interagency Agreement, 5.106
COMMISSION JURISDICTION - Scope of Jurisdiction - Constitutional Application of Act, 35.02
COVERAGE OF ACT - Enforcement against State Operations - Tenth Amendment - Traditional Government Function, 5.101 5.05
COVERAGE OF ACT - Commerce - Broad Interpretation of "Affect Commerce", 5.102
30 CFR 56.18-10
SAFETY PROGRAMS - Availability of First-Aid Training, 56.18
30 CFR 56.14-1
MECHANICAL EQUIPMENT - Guarding Exposed Moving Parts - Pinch Points, 56.14

1328
NOLICHUCKEY SAND COMPANY
79-1111
October 5, 1979
6th Cir Court
N/A*

Warrant is not required for periodic inspection of "active workings" of sand and gravel "mines," in view of statistics showing extreme hazardousness of such mines and sufficient privacy guarantees in Federal Mine Safety and Health Act of 1977.

77: 3(h) 77: 103(a)
INSPECTIONS - Lack of Warrant - Constitutionality - Sand and Gravel Operations, 22.05 5.106

1329
NOLICHUCKEY SAND COMPANY
79-1204
April 21, 1980
US SUPREME COURT
N/A

1121
NORTH AMERICAN SAND & GRAVEL COMPANY
LAKE 79-51-M
July 31, 1980
ALJ - Final
7/80 p2017*

Absence of berms at side of ramp leading up to hopper does not violate 30 CFR §56.9-54, which requires that berms or bumper blocks be installed to prevent overtravel and overturning at dumping locations, because standard does not require berms at side of ramp, and hopper would prevent overtravel in dumping area.

Citation for violation of 30 CFR §56.14-1 which requires guarding of exposed moving machine parts must be vacated when evidence established that cited chain and drive pulley which had exposed pinch points were both located out of workers' reach.

Operator violates 30 CFR §56.12-16, which requires use of lock-out procedure to insure that miner working on electrical equipment is not injured by inadvertent starting of equipment, where inspector, who was told that fuses were removed from fuse box when equipment was repaired, found fuses in place; additionally, actual removal of fuses is not type of fool-proof system required by standard.

30 CFR 56.9-54
HAULAGE - Berms Required at Dumping Locations, 56.09
30 CFR 56.14-1
MECHANICAL EQUIPMENT - Guarding Exposed Moving Parts - Guarding by Location, 56.14
30 CFR 56.12-16
ELECTRICAL HAZARDS - Electrical Equipment - Lock-Out Procedure, 56.12

816
NORTHERN AGGREGATES, INC.
WILK 79-144-PM
May 7, 1980
ALJ - Final
5/80 p1065

77: 109(a)
30 CFR 56.14-1
30 CFR 56.9-22

815
NORTHERN AGGREGATES, INC.
YORK 79-79-M
May 7, 1980
ALJ - Final
5/80 p1062

29 CFR 2700.9

884
NOTO EXCAVATING, INC.
YORK 79-104-M
June 27, 1980
ALJ - Final
6/80 p1676

PA

868
OATVILLE SAND & GRAVEL COMPANY
CENT 79-40-M
June 19, 1980
ALJ - Final
6/80 p1522

30 CFR 56.9-87

1166
OHIO AMCO, INC.
LAKE 80-3
October 17, 1980
ALJ - Final
10/80 p2941

30 CFR 77.1004(b)

805
OKLAHOMA CEMENT COMPANY
DENV 79-146-PM
April 8, 1980
ALJ - Final
4/80 p827

PS

1033
OLD BEN COAL COMPANY
LAKE 79-238
July 25, 1980
ALJ - Review Granted
7/80 p1929

30 CFR 75.520
30 CFR 70.210(b)
30 CFR 70.100(b)

1142
OLD BEN COAL COMPANY
LAKE 79-238
October 9, 1980
RC
10/80 p2784

1189
OLD BEN COAL COMPANY
LAKE 80-358
October 29, 1980
ALJ - Final
10/80 p3164

143
OLD BEN COAL COMPANY
VINC 74-11
December 12, 1979
RC - Reverse & Reinstate
12/79 p1954*

(Old Docket Number IBMA No. 75-52)

Language of 30 CFR §75.400, legislative history of standard, and general purposes of 1969 Act support holding that standard is violated when accumulation of combustible materials exists, regardless of whether operator knew of accumulation or whether cleanup effort was begun within "reasonable time."

Operator's failure to begin cleanup of accumulation of combustible materials until after 8 a.m. shift began, when accumulation was discovered between 4 a.m. and 7 a.m., constituted unwarrantable failure to comply with 30 CFR §75.400 and justified issuance of withdrawal order.

It is unnecessary for Review Commission to review conclusion of Interior Board of Mine Operation Appeals that violative conditions did not significantly and substantially contribute to cause of safety hazard since "significant and substantial" finding is not required for issuance of unwarrantable failure withdrawal order under section 104(d)(2) of 1977 Act.

30 CFR 75.400
COMBUSTIBLE MATERIAL - Accumulation - Operator's Knowledge - Cleanup Effort - Legislative History - 1969 Act, 75.0400 5.08
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Cleanup Efforts - Unwarrantable Failure Withdrawal Order, 75.0400 24.20
77: 104(d)(2)
WITHDRAWAL ORDERS - Unwarrantable Failure - "Significant and Substantial" Finding, 24.20

1144
OLD BEN COAL COMPANY
VINC 75-180-P
October 24, 1980
RC - Remanding
10/80 p2806*

Judge's vacation of notices alleging violations of 30 CFR 75.400, based on inspector's failure to measure depth or extent of accumulation of oil-saturated coal dust, was error because requirement of evidence of depth and extent of accumulation is too restrictive and does not further congressional intent.

For purposes of establishing violation of 30 CFR 75.400, accumulation exists where quantity of combustible materials is such that, in judgment of inspector, it likely could cause or propagate fire or explosion if ignition source were present.

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Judge's vacation of notices alleging violations of 30 CFR 75.403, issued for failure to maintain sufficient incombustible content in rock dust, based on inspector's use of band sampling method contrary to directive contained in instructional manual, was error because such instructions are not officially promulgated and do not prescribe rules of law binding upon agency and failure to follow such directive is not sufficient basis to vacate notice of violation.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation of Oil-Saturated Coal Dust - Inspectors Failure to Measure Depth or Extent, 75.0400
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Quantity Necessary to Establish Violation, 75.0400
30 CFR 75.403
ROCK DUSTING - Sufficiency of Incombustible Content - Band Sample Method - Directives in Manual, 75.0403

1254
OLD BEN COAL COMPANY
VINC 75-180-P
November 17, 1980
ALJ - On Remand
11/80 p3302

30 CFR 75.400
30 CFR 75.403

895
OLD BEN COAL COMPANY
VINC 75-267
June 2, 1980
RC
6/80 p1187*

(Reference Docket Numbers VINC 75-269, 75-270, 75-271, and 75-273, IBMA No. 76-21)

Withdrawal orders issued pursuant to Section 104(c)(1) of Federal Coal Mine Health and Safety Act of 1969 more than 90 days after underlying notice of violation were valid since one withdrawal order was issued pursuant to §104(c)(1) within 90 days of underlying notice of violation, any subsequent orders were in effect §104(c)(2) orders, which do not have to be issued within 90 days, and judge had authority to modify orders from §104(c)(1) to (c)(2).

69: 104(c)(1)
WITHDRAWAL ORDERS - Unwarrantable Failure - 90-day Requirement - Modification of Order, 24.20 24.25 24.07 35.02

1022
OLD BEN COAL COMPANY
VINC 75-313
July 3, 1980
ALJ - Final
7/80 p1783

69: 104(c)(1)

478
OLD BEN COAL COMPANY
VINC 77-61-P
April 28, 1978
ALJ - Final
Unbound*

Operator has burden of going forward with evidence that sampling taken by personal dust sampler was for its own use, and therefore outside scope of 30 CFR 70.270, where sampling would not likely be undertaken except for existence of governmental regulations, and operator's sampling is for apparent purpose of aiding it in meeting regulatory requirements, operator uses same equipment, sampling is conducted in same manner as that for compliance purposes, and operator can easily identify its own sampling.

30 CFR 70.270
PROOF - Burden of Going Forward - Purpose of Respirable Dust Sampling, 35.30 70.0270
69: 109(a)

492
OLD BEN COAL COMPANY
VINC 77-73-P
February 2, 1979
ALJ - Final
Unbound

30 CFR 75.400

212
OLD BEN COAL COMPANY
VINC 77-126-P
May 3, 1978
ALJ - Final
Unbound

30 CFR 75.200

521
OLD BEN COAL COMPANY
VINC 79-119-P
April 27, 1979
ALJ - Review Granted
4/79 p271

77: 3(d)

113
OLD BEN COAL COMPANY
VINC 79-119-P
October 29, 1979
RC - Appealed
10/79 p1480*

(Reference D.C. Cir. Number 79-2367)

Owner-operator of mine can be held responsible under Federal Mine Safety and Health Act of 1977 for violations committed by independent contractor engaged by owner to perform work on owner's premises.

Review Commission and its judges have authority under 1977 Act to review Secretary of Labor's policy decision to proceed against owner-operator of mine for violation committed by independent contractor in view of need to permit Secretary time for development of new policies and procedures following transfer of mine safety enforcement responsibilities under 1977 Act.

Review Commission will not disturb Secretary of Labor's policy decision to proceed against owner-operator of mine for violation committed by independent contractor in view of need to permit Secretary time for development of new policies and procedures following transfer of mine safety enforcement responsibilities under 1977 Act.

77: 3(e)
INDEPENDENT CONTRACTORS - Liability of Owner-Oprator under 1977 Act, 37.20
COMMISSION JURISDICTION - Secretary's Policy on Independent Contract or Violations - Comm's Authority to Review, 35.02 37.20
INDEPENDENT CONTRACTORS - Secretary's Policy Decision - Commission's Acceptance, 37.20 35.01

1281
OLD BEN COAL COMPANY
VINC 79-119-P
December 9, 1980
US APPEALS DC
N/A*

(Reference D.C. Cir. Number 79-2367)

Secretary did not abuse his discretion in proceeding under interim policy against owner-operator for violations of Federal Mine Safety and Health Act committed by independent contractor.

30 CFR 45
INDEPENDENT CONTRACTORS - Citation of - Secretary's Interim Policy - Abuse of Discretion, 37.20

150
OLGA COAL COMPANY
HOPE 79-111
October 11, 1979
ALJ - Final
10/79 p1580*

Fact that inspector failed to make specific finding that entries other than beltway entry permitted adequate coursing of intake air in mine and failed to communicate such finding to operator is no defense to violation of 30 CFR §75.326, especially where operator acquiesced in ventilation plan that called for ventilation with air other than that of belt entry.

Operator's argument that leakage of air from belt entry was unintentional and did not constitute use of belt air to ventilate active workings in violation of 30 CFR §75.326 is rejected since standard does not require that use of belt entry air be intentional.

Operator's failure to keep belt entry air out of working area after it observed that longfall face had become contaminated and that doorway and holes in belt entry stopping provided obvious avenue for smoke from belt to reach working section, constituted unwarrantable failure to comply with 30 CFR §75.326.

Accumulation for three full mining shifts of combustible materials up to 20 inches in depth and extending along entire 600-foot length of active shuttle car haulage road and for 14 feet across width of entry constituted unwarrantable failure to comply with 30 CFR §75.400.

Operator's "greater hazard" defense to violation of 30 CFR §75.400 to effect that foreman failed to clean up accumulation because he recognized existence of two safety hazards and attended to more serious hazards reduction of pressure on mine roof, is rejected since operator's approved cleanup program called for cleanup "as required" and mine personnel failed to effect plan.

30 CFR 75.326
VENTILATION - Coursing of Intake Air - Belt Haulage Entry - Communication of Finding to Operator - Ventilation Plan, 75.0326 37.01
30 CFR 75.326
VENTILATION - Leakage of Belt Entry - Air from Belt Entry - Active Working Section - Unintentional Leakage, 75.0326 37.05
30 CFR 75.326
VENTILATION - Unwarrantable Failure - Belt Entry Air - Active Working Section, 75.0326 24.20
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Three Full Mining Shifts - Unwarrantable Failure, 75.0400 24.20
30 CFR 75.400
DEFENSES - "Greater Hazard" Defense - Two Safety Hazards - Failure to Clean up Accumulation, 37.10 75.0400

966
OLGA COAL COMPANY
HOPE 79-113-P
June 28, 1979
ALJ - Review Granted
Unbound

1137
OLGA COAL COMPANY
HOPE 79-113-P
October 8, 1980
RC - Reversing & Remanding
10/80 p2769*

Judge's rejection of proposed settlement and vacation of citation because of his view that respirable dust standard, 30 CFR 70.100(b), is unenforceable, without first seeking argument from parties, were erroneous because Administrative Procedure Act requires that judge give parties opportunity to be heard on question of enforceability of standard before dismissing action.

30 CFR 70.100(b)
COMMISSION PROCEDURE - Sua Sponte Vacation of Citation - Secretary's Opportunity to Be Heard, 35.22

1120
OLGA COAL COMPANY
WEVA 80-124
July 23, 1980
ALJ - Final
7/80 p1862*

Measurements made by Mine Safety and Health Administration inspectors of initial cuts of coal in pillars of cited area and placement of roof supports may be used as evidence to establish that company violated 30 CFR 75.200 by allowing continuous mining machine to operate under unsupported roof, in violation of its roof-control plan.

30 CFR 75.200
ROOF SUPPORT-Roof Control Plan-Minning Machine Under Unsupported Roof-Inspector's Measurements as Evidence, 75.0200

785
OLIVER MINE MAINTENANCE COMPANY
NORT 78-415
March 27, 1979
RC - Appealed - Dismissed
3/79 p23*

(Reference D.C. Cir. Number 79-1409)

Review Commission judge lacks authority to censure or otherwise discipline attorneys appearing before him in absence of determination by Commission under Interim Rule 5(b) (29 CFR §2700.5(b)) that disciplinary proceedings are warranted.

29 CFR 2700.5(b) (I)
REVIEW COMM PROCEDURE- Judge's Authority to Censure Attorneys- Need for Determination by Commission, 35.90

314
OLIVER MINE MAINTENANCE COMPANY
NORT 78-416
November 30, 1978
ALJ - Final
Unbound

29 CFR 2700.35 (I)
77: 105(c)

156
ORA MAE COAL COMPANY
KENT 79-263-D
December 31, 1979
RC - Deny Interlock. Review
12/79 p1963*

Secretary of Labor's petition for interlocutory review of judge's ruling that he must produce certain documents is denied since Secretary's claim of executive privilege, argument that documents might reveal identity of informants, and request for in camera inspection by judge should have been made to judge, rather than in petition for interlocutory review.

REVIEW COMM PROCEDURE-Production of Documents Motion-Names of Miner-Informants Disclosure-Interlocutory Review, 35.14 35.22

656
ORACLE RIDGE MINING PARTNERS
WEST 79-248-M
December 8, 1979
ALJ - Review Granted
12/79 p2015

30 CFR 57.6-20(c)
30 CFR 57.2

897
ORACLE RIDGE MINING PARTNERS
WEST 79-248-M
June 6, 1980
RC
6/80 p1192*

Standard, 30 CFR 57.6-20, which requires that magazines be "constructed substantially of noncombustible material or covered with fire resistant material," was erroneously construed by judge as imposing density requirement since standard was intended only to minimize risk of fire and does not relate to density of construction.

30 CFR 57.6-20 30 CFR 57.6-20(c)
EXPLOSIVES - Construction of Magazines - Interpretation of Standard, 57.06 40.30

624
OSBORNE COAL COMPANY
BARB 78-618-P
September 27, 1979
ALJ - Final
9/79 p1445

29 CFR 2700.26(b) (I)

671
OTTAWA SILICA COMPANY
WILK 79-69-PM
December 28, 1979
ALJ - Review Denied
12/79 p2161

30 CFR 56.12-32
30 CFR 56.4-11
30 CFR 56.12-68
30 CFR 56.3-5

1032
OZARK MAHONING COMPANY
LAKE 79-280-M
July 25, 1980
ALJ - Final
7/80 p1924

PS

180
OZARK MAHONING COMPANY
VINC 79-138-PM
November 29, 1979
ALJ - Review Denied
11/79 p1922*

(Reference Docket Number 79-173-PM)

Operator violated 30 CFR §57.9-71, which requires that traffic rules be posted, since traffic rules including speed, signals and warning signs were not standardized and posted at mine and operator had not posted traffic sign at point where vehicles exited mine property onto country road.

Operator violated 30 CFR §57.12-82, which requires that power lines be well separated or insulated from waterline, since power cable crossed over and made contact with aluminum water pipe and any physical damage done to insulation of power cable could have caused energization of waterline.

Operator violated 30 CFR §57.12-82, which requires that power lines be well separated or insulated from waterlines, since energized powerline had been suspended from aluminum air and waterlines with uninsulated tie wire.

Operator violated 30 CFR §57.11-51(a), which requires that safe escape routes be maintained, since loose rock had accumulated on rungs of escape ladder so as to make a safe handhold or foothold difficult to obtain and accumulations of rock on landings presented slipping or tripping hazard.

Operator violated 30 CFR §57.6-92, which requires that damaged or deteriorated explosives be destroyed in safe manner, since sticks of explosive were becoming "very mushy" and beads of oil had formed on outer surfaces.

30 CFR 57.9-71
  HAULAGE - Failure to Post Traffic Rules - Country Road, 57.09
30 CFR 57.12-82
  ELECTRICAL HAZARDS - Power Cable - Insulation - Potential Energization of Waterline, 57.12
30 CFR 57.12-82
  ELECTRICAL HAZARDS - Powerline - Aluminum Air and Waterlines - Uninsulated Tie Wire, 57.12
30 CFR 57.11-5(a)
  ESCAPEWAYS - Ladders and Landings - Loose Rock Tripping Hazard, 57.11
30 CFR 57.6-92
  EXPLOSIVES - "Mushy" Explosives - Formation of Oil Drops on Explosives, 57.06

283
P & P COAL COMPANY
NORT 78-332-P
September 22, 1978
ALJ - Final
Unbound
PS

377
P M & B COAL COMPANY INC.
NORT 78-13-P
June 13, 1978
ALJ - Final
Unbound*

Civil penalty cases involving alleged respirable dust violations occurring prior to the amendment of definition of respirable dust in Federal Mine Safety and Health Act of 1977 should be disposed of on basis of settlement agreement reached on May 10, 1978, in which it was agreed that operators would pay $9 per alleged violation.

Operator violated 30 CFR §75.301-1 when loading machine was found operating in face of entry where less than minimum quantity of air was reaching face, even though miners had taken air reading before beginning to load coal and had found air to be adequate, because miners should have been able to notice that there was more dust in air than is normal.

30 CFR 70.200
RESPIRABLE DUST - 1977 Amendment of Standard - Agreed Settlement Procedure, 70.0200 35.40
30 CFR 75.301-1
RESPIRABLE DUST - Air Quantity, 75.0301
30 CFR 70.201
30 CFR 70.264
30 CFR 75.313-1
30 CFR 75.601-3
30 CFR 75.1801
69: 109(a)(1)

918
PACER CORPORATION
DENV 79-97-PM
April 7, 1980
ALJ - Final
4/80 p811*

(Reference Docket Number DENV 79-95-PM)

Operator who does not place barricades in area of loose overhanging rocks and allows men to work near this area exposes them to hazard of falling rocks and violates requirement of 30 CFR §55.3-5.

By removing barricades and allowing men to work in area which had previously been subject to order of withdrawal and abatement because of loose rock and dangerous overhang, and dangerous condition is still present, operator is in violation of 30 CFR §55.3-5.

30 CFR 55.3-5
GROUND CONTROL - Drilling and Blasting - Work Near Overhanging Banks, 55.03
30 CFR 55.3-5
GROUND CONTROL - Drilling and Blasting - Work Near Overhanging Banks - Removal of Barricades, 55.03

591
PACER CORPORATION
DENV 79-257-PM
August 28, 1979
ALJ - Review Granted/Vacated
8/79 p1081*

Silica dust samples of five miners that show 3- to 14-percent variance between lowest and highest reading of percentage of silica raise possibility of inaccuracy of sampling methods and are inadequate evidence to support finding of violation of requirement of 30 CFR §55.5-1(a) that exposure to airborne contaminants not exceed threshold limit values.

30 CFR 55.5-1(a)
AIR QUALITY - Silica Dust Samples - Variance Between Readings - Adequacy of Evidence, 55.05 35.30

672
PARAMONT MINING COMPANY
NORT 79-51-P
November 15, 1979
ALJ - Review Granted
12/79 p2211

30 CFR 75.200
30 CFR 75.313

1098
PARAMONT MINING COMPANY
VA 79-51
September 26, 1980
RC - Remanding
9/80 p2476*

Production of coal is not necessary element of violation of 30 CFR 75.313, which requires that methane monitors on continuous miners be kept operative and be set to de-energize equipment when monitor is not operating properly, and Secretary need not prove that coal was actually being cut, mined, or loaded while monitor was bridged out in order to establish violation.

30 CFR 75.313
VENTILATION - Defective Methane Monitor on Continuous Miner - Production of Coal as Element of Violation, 75.0313

1011
PATCO, INC.
KENT 80-34
September 26, 1980
ALJ - Final
9/80 p2711*

Citation issued against operator for violating Section 103(a) of Federal Mine Safety and Health Act of 1977 because alleged agent of operator denied entry to Mine Safety and Health Administration inspector must be vacated when evidence established that alleged agent was no longer employed by operator, had never acted in management capacity, had never been authorized to act for operator, and operator did not ratify unauthorized acts of alleged agent.

77: 103(a)
COVERAGE OF ACT - Agents of Operators - Expressed or Implied Agency, 5.109

1129
PEABODY COAL COMPANY
BARB 76-117
July 1, 1980
RC
7/80 p1683*

(Reference Old Docket Number IBMA No. 77-4)

Existence of bent flange on overhead chain hoist, which caused rollers to lose contact with overhead beam and to fall, constitutes violation of 30 CFR §77.404(a), which requires that machinery be kept in safe condition, regardless of mine operator's knowledge of unsafe condition.

30 CFR 77.404(a)
MECHANICAL EQUIPMENT - Overhead Chain Hoist - Bent Flange - Operator's Knowledge of Unsafe Condition, 77.0404 37.05

348
PEABODY COAL COMPANY
BARB 77-245-P
April 28, 1978
ALJ - Review Granted
Unbound

30 CFR 75.202

398
PEABODY COAL COMPANY
BARB 77-245-P
January 29, 1979
RC
3/79 p15*

Term "rib" as used in provision of 30 CFR §75.202 requiring overhanging ribs to be taken down or supported covers entire wall of entry, including coal seam and any rock above seam.

30 CFR 75.202
ROOF SUPPORT - Overhanging Ribs - Rock Above Coal Seam, 75.0202

456
PEABODY COAL COMPANY
BARB 78-450
August 15, 1978
ALJ - Final
Unbound

77: 105(d)

594
PEABODY COAL COMPANY
BARB 78-474-P
August 29, 1979
ALJ - Final
8/79 p1155

30 CFR 75.402
30 CFR 75.200
30 CFR 75.402
30 CFR 75.301
30 CFR 75.302-1
30 CFR 75.301-1

36
PEABODY COAL COMPANY
BARB 78-606-P
March 26, 1979
ALJ - Final
3/79 p143*

Existence of entries and crosscuts that were driven in widths exceeding 20-foot width called for in approved roof control plan constitutes violation of 30 CFR §75.200, since roof plan is controlling, while 1974 MESA Inspector's Manual, which defines term "excessive" as "12 inches or more" than planned opening width, does not have force of law and is not controlling, and excessive widths are prevalent and due to poor mining practices.

Delay in abatement of roof support violation does not justify finding of lack of good faith of operator for purposes of penalty assessment, since full abatement required setting of more than 100 timbers during foreman's work stoppage, and there was no evidence that operator had condoned work stoppage.

Coal company's history of violations before sale of its stock to present owner may be considered in assessing civil penalty where there is no evidence that mine management has undergone any changes, holding company is present owner of coal company, coal company is holding company's sole asset, there has been continuity of operation of mine, and only change has been of sale of stock.

Failure to provide qualified hoisting engineer at or near mine's hoist facility while persons are underground does not constitute violation of 30 CFR §75.1400 where mine personnel were not transported underground by means of the hoisting device, since nothing in standard requires mine operator to use hoisting device to transport men or supplies underground or to install such a hoist, or have it available for transportation of men to surface in event of emergencies, and standard refers to circumstances in which persons are transported into or out of a mine, rather than location at which such transportation is had.

30 CFR 75.200
ROOF SUPPORT - Excessive Widths - Inspector's Manual - Underground Coal Mines, 75.0200 40.30
77: 110(i)
PENALTIES - Good Faith - Delay in Abatement, 26.60
77: 110(i)
PENALTIES - History of Violations - Stock Transfer, 26.10
30 CFR 75.1400
HOISTS - Man Hoists and Elevators - Underground Coal Mines, 75.1400

185
PEABODY COAL COMPANY
BARB 78-613-P
November 29, 1979
ALJ - Final
11/79 p1928*

In assessing penalty, administrative law judge can consider history of violations of company even though company had changed ownership and management of safety matters, since company failed to establish that substantive changes in its mine safety and health policy had occurred.

Motion to dismiss citation alleging violation of 30 CFR §75.1722(c) is denied, even though documents attached to petition referred to 30 §1722(b), since alleged violation was described with sufficient specificity to permit abatement and preparation of defense, evidence adduced by both parties related solely to §75.1722(c), and company was not prejudiced by amendment to correct errors.

Company violated 30 CFR §75.1722(c), which requires that guards on machinery be "securely in place," since guards were attached with shooting wire rather than thick general utility wire, and tailpiece guards were secured at seven of 12 locations and four of six wires attaching guard to conveyor drive were located at top along length of guard, with none on either side along width of guard.

77: 110(i)
PENALTIES - History of Violations - Change of Management - Company's Safety Policy, 26.10
30 CFR 75.1722(c)
CITATIONS - References to Wrong Standard Specificity - Lack of Prejudice to Company, 24.05 24.07
30 CFR 75.1722(c)
MECHANICAL EQUIPMENT - Guards - Weak Wire Attachments - Shooting Wire, 75.1722

54
PEABODY COAL COMPANY
BARB 78-653-P
April 3, 1979
ALJ - Final
4/79 p28*

Cited area is "active working" within scope of 30 CFR §75.400 in light of operator's failure to seal and abandon area pursuant to its ventilation plan, despite contentions that work had been completed there, that regular duties such as extracting coal are no longer performed there, that operator did not plan to return there to work, that area had not been preshifted pursuant to 30 CFR §75.303, and that inspector may have contradicted his testimony characterizing area as "active working".

Despite consistently occurring coal and coal dust accumulation violations, coal company's large size, and existence of cited accumulations over long period without clean up, mitigation of Secretary's recommended civil penalty for 30 CFR §75.400 violation is justified since conditions cited were neither grave nor posed a serious threat to miner safety and since they were cleaned up promptly once order was issued.

30 CFR 75.400 30 CFR 75.303
COMBUSTIBLE MATERIALS - "Active Workings" - Underground Coal Mines, 75.0400
30 CFR 75.400 77: 110(i)
PENALTIES - In General, 26.01

124
PEABODY COAL COMPANY
BARB 78-655-P
August 29, 1979
ALJ - Final
8/79 p1121*

Mandatory standard 30 CFR §75.400 was violated where entries in belt examiner's book and shift reports made prior to inspection showed mine operator knew or should have known of accumulation of combustible material along belt.

Presence and brownish color of float coal dust deposited atop spilled coal indicated that accumulation had been present for at least one week and that mine operator knew or should have known about it, thus violating 30 CFR §75.400.

Inadequately supported roof at entry of mine constituted violation of 30 CFR §75.200, even though not in violation of mine operator's approved roof control plan, where there were inadequate number of supports present, rocks were observed hanging from roof of cavity and miners were seen passing beneath cavity.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Operator's Knowledge - Shift Report Entries - Underground Coal Mines, 75.0400 37.05
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Float Coal Dust - Underground Coal Mines, 75.0400
30 CFR 75.200
ROOF SUPPORT - Condition not in Violation of Approved Plan, 75.0200

937
PEABODY COAL COMPANY
BARB 78-689-P
May 7, 1980
ALJ - Final
6/80 p1211*

Lack of sufficient evidence that bolts of roof supports were loose preceding roof fall and that miner was working under unsupported roof when accident occurred requires dismissal of citation for violation of 30 CFR §75.200 because occurence of roof fall is not prima facie evidence of operator's failure to follow roof control plan as fall itself could have loosened bolts of roof supports.

Using thin piece of wire as guard for clutch coupling of ratio feeder violates 30 CFR §75.1722 which requires that adequate guardings be placed on exposed moving parts because, even if wire were of sufficient tensile strength, guard was still not secured adequately to withstand pressure of fall against it.

30 CFR 75.200
ROOF SUPPORT - Roof Control Plan - Working Under Unsupported Roof - Evidence, 75.0200
30 CFR 75.1722
MECHANICAL EQUIPMENT - Guarding of Exposed Moving Parts, 75.1722

925
PEABODY COAL COMPANY
CENT 79-29
May 7, 1980
ALJ - Review Denied
5/80 p1072*

(Reference Docket Number CENT 79-221)

"Trimmed properly" as used in 30 CFR §77.1607(aa) means that excess coal must be removed from haulage trucks which are loaded higher than confines of their cargo space to prevent such coal from falling off trucks, and does not mean that haulage truck may be loaded to its "angle of repose"; therefore, operator violates requirements of section 77.1607(aa) by allowing large chunks of coal on slope above confines of trucks' cargo space without taking proper measures to prevent any chunks of coal from falling out of cargo area.

30 CFR 77.1607(aa)
HAULAGE - Proper Trimming of Trucks - Interpretation of Standard, 77.1607

716
PEABODY COAL COMPANY
CENT 79-335-R
March 7, 1980
ALJ - Final
3/80 p659*

Bulldozer kept in service while operator knew of faulty transmission that made operation hazardous was subject to withdrawal order due to unwarrantable failure of operator to comply with 30 CFR §77.404(a) requirement that equipment in unsafe operating condition be removed from service immediately.

30 CFR 77.404(a)
MECHANICAL EQUIPMENT - Operation and Maintenance - Unwarrantable Failure to Comply, 77.0404 24.20
77: 104(d)(1)

464
PEABODY COAL COMPANY
DENV 77-57-P
October 11, 1978
ALJ - Final
Unbound

69: 109(a)(1)
30 CFR 75.200

1205
PEABODY COAL COMPANY
DENV 77-67-P
November 13, 1978
ALJ - Final
Unbound*

Necessity that power be on while electrician was "testing" malfunctioning circuit breaker bars finding of violation of requirement of 30 CFR 75.509 that electric equipment be de-energized before work is done on it, except when necessary for testing.

30 CFR 75.509
Electrical Hazards - Electrical Equipment -- Deenergization -- Exception When Testing, 75.0509

1211
PEABODY COAL COMPANY
DENV 77-77-P
August 30, 1978
ALJ - Final
Unbound*

(Reference 6th Cir. Number 78-3424)

Operator does not violate 30 CFR 77.1710(g) which requires that miners wear safety belts while working in position where they are liable to fall when evidence establishes that failure to wear safety belt is solely result of employee's disobedience or negligence, rather than lack of requirement by operator to wear them.

30 CFR 77.1710(g)
PROTECTIVE CLOTHING - Safety Belts -- Failure to Wear -- Employee Negligence, 77.1710 37.25

794
PEABODY COAL COMPANY
DENV 78-443-P
January 9, 1979
ALJ - Final
Unbound*

Secretary's failure to prove trailing cable was not adequately buried to prevent damage from mobile equipment and thus violated 30 CFR §77.604 justified dismissal of petition for assessment of civil penalty.

30 CFR 77.604
TRAILING CABLES - Protection of Trailing Cables - Surface Coal Mines, 77.0604

330
PEABODY COAL COMPANY
DENV 78-500-P
December 15, 1978
ALJ - Final
Unbound

30 CFR 77.1104

98
PEABODY COAL COMPANY
DENV 78-557
June 29, 1979
ALJ - Final
6/79 p716*

Hole loaded with explosive and primer but lacking blasting cap or other firing device is not "charged hole" within meaning of 30 CFR §77.1303(g), despite contrary provision of MSHA inspector's manual.

Neither operation of bulldozer within five feet of holes loaded with ammonium nitrate explosive and primer nor possibility of bulldozer backing over coiled Primacord constituted imminent danger in view of relative insensitivity of such materials.

30 CFR 77.1303(g)
EXPLOSIVES - Charged Holes - Lack of Firing Device - Inspector's Manual, 77.1303 40.30
77: 107(a)
IMMINENT DANGER - Operation of Bulldozer Near Explosives, 24.50

598
PEABODY COAL COMPANY
DENV 78-565-P
August 30, 1979
ALJ - Final
8/79 p1273

29 CFR 2700.26(d)(3) (I)

397
PEABODY COAL COMPANY
DENV 78-576-P
March 7, 1979
ALJ - to be Amended
3/79 p79

69: 110(a)

409
PEABODY COAL COMPANY
DENV 78-576-P
March 30, 1979
ALJ - Amendment
3/79 p207

PA

527
PEABODY COAL COMPANY
DENV 79-79-P
April 30, 1979
ALJ - Final
4/79 p295

PA

841
PEABODY COAL COMPANY
KENT 79-11
May 29, 1980
ALJ - Final
6/80 p1258

PS

160
PEABODY COAL COMPANY
KENT 79-107-R
October 29, 1979
ALJ - Final
10/79 p1724*

Testimony of MSHA's roof-control specialist that roof was safe does not outweigh testimony of MSHA inspector and operators of roof-bolting machines, since inspector and roof-bolters observed drilling of test holes in roof by roof-bolting machines which indicated that separations existed in roof strata, whereas MSHA specialist had not observed roof-bolting machine in operation.

Finding of imminent danger is affirmed since resin bolts were not anchored thoroughly, water was seeping through roof strata, ominous cracks had appeared in roof, and nearby roof had previously required rebolting with longer bolts than were normally used.

30 CFR 75.206
EVIDENCE - Testimony of MSHA Specialist & MSHA Inspector - Personal Observation of Roof Tests, 35.30 75.0200
77: 107(a) 30 CFR 75.200
IMMINENT DANGER - Roof Control - Faulty Resin Bolts - Water seepage - Cracks in Roof - Rebolting with Longer Bolts, 24.50 75.0200

1003
PEABODY COAL COMPANY
KENT 80-103
September 25, 1980
ALJ - Final
9/80 p2677

77: 110(c)

905
PEABODY COAL COMPANY
KENT 80-124
April 29, 1980
ALJ - Review Dismissed
4/80 p987*

Mine management's superficial response to miners' complaint of separations in roof strata, its failure to adequately examine area for potential safety violations, and its refusal to provide supplemental supports for hazardous roof conditions constitutes high degree of negligence which justifies assessment of substantial penalty against operator for violating requirements of 30 CFR 75.200 which states that roofs must be adequately supported.

30 CFR 75.200 77: 110(i)
PENALTIES - Negligence of Operator - Failure to Respond to Safety Complaint - Inadequate Roof Support, 26.30 75.0200 24.50

1030
PEABODY COAL COMPANY
KENT 80-155
July 25, 1980
ALJ - Final
7/80 p1880

PS

1167
PEABODY COAL COMPANY
KENT 80-187
October 17, 1980
ALJ - Final
10/80 p2953*

Inspector's personal observation of ripped and torn outer cable jackets is sufficient to establish that high voltage cable was in fact damaged by equipment passing over it at point where it was covered with dirt in violation of 30 CFR 77.807, despite fact that inspector did not pinpoint exact locations where cable damage was discovered.

30 CFR 77.807
ELECTRICAL HAZARDS - Protection of High Voltage Cable - Damage by Mobile Equipment, 77.0807

824
PEABODY COAL COMPANY
LAKE 80-247
May 23, 1980
ALJ - Final
5/80 p1153*

When procedural question is not regulated by Mine Safety and Health Act of 1977 or its procedural rules, commission or judge shall be guided by Federal Rules of Civil Procedure, so that where one party's motion for dismissal of other party's case is granted, dismissal is with prejudice unless judge states otherwise in dismissal order, and doctrine of res judicata applies, as provided by Rule 41 of Federal Rules of Civil Procedure.

JUDGMENT - Involuntary Dismissal, 35.60

1076
PEABODY COAL COMPANY
LAKE 80-25
March 5, 1980
ALJ - Review Granted

30 CFR 75.400
29 CFR 2700.27(a)
77: 113(d)(1)

893
PEABODY COAL COMPANY
LAKE 80-25
May 16, 1980
RC
5/80 p1035*

(Reference Docket Numbers LAKE 80-26, 80-27, 80-36, and 80-77)

Operator's denial that coal spillage constituted "accumulation" within meaning of 30 CFR § 75.400 after administrative law judge's disapproval of settlement entitled operator to hearing pursuant to Section 105(d) of Federal Mine Safety and Health Act of 1977 even though operator admitted existence of spillage since depth of spillage was disputed issue of material fact that remained unresolved.

Administrative law judge lacked jurisdiction to rule on operator's motion for reconsideration of prior decision because judge's prior decision constituted "his final disposition of the proceeding" within meaning of Section 113(d)(1) of 1977 Act, terminating judge's jurisdiction over case.

30 CFR 75.400 29 CFR 2700.27(a)
REVIEW COMMISSION PROCEDURE - Disapproval of Settlement - Disputed - Issue of Material Fact - Right to Hearing, 35.18 35.40 75.0400
77: 113(d)(1)
REVIEW COMMISSION PROCEDURE - Motion to Reconsider Prior Decision - Judge's Jurisdiction - Final disposition, 35.22 35.24

820
PEABODY COAL COMPANY
LAKE 80-36
May 21, 1980
ALJ - Review Granted
5/80 p1122

1026
PEABODY COAL COMPANY
LAKE 80-77
July 11, 1980
ALJ - Final
7/80 p1795

30 CFR 75.400

123
PEABODY COAL COMPANY
VINC 77-12-P
October 31, 1979
RC
10/79 p1494*

(Reference Old Docket Number IBMA No. 77-57) (Reference Docket Number 77-13-P)

Internal hydraulic leakage in fork lift constituted violation of 30 CFR §77.404(a), which requires that machinery be kept in safe condition, regardless of operator's knowledge of unsafe condition.

Operator violated 30 CFR §77.1713(a) when mine foreman observed unsecured tire hanging from forklift and was aware of prior accident involving forklift, but failed to correct hazard by insuring tht hydraulic system on forklift was functioning properly or removing forklift from working area.

30 CFR 77.404(a)
MECHANICAL EQUIPMENT - Hydraulic Leak - Forklift - Operator's Knowledge - Surface Coal Mines, 77.0404 37.05
30 CFR 77.1713(a)
SELF-INSPECTION - Observation of Hazard - Failure to Correct - Surface Coal Mine, 77.1713

967
PEABODY COAL COMPANY
VINC 77-40
March 1, 1978
ALJ - Review Granted
Unbound

69: 104(a)
69: 103(f)

125
PEABODY COAL COMPANY
VINC 77-40
November 14, 1979
RC
11/79 p1785*

Withdrawal order issued under §104(a) of Federal Coal Mine Safety and Health Act of 1969 that informed operator that gob fire existed in specified area of mine sufficiently apprised operator of alleged imminent danger.

Withdrawal order issued under §104(a) of Federal Coal Mine Health and Safety Act of 1969 was not based on "stale information" and "speculation and conjecture" when inspector, on basis of data obtained three days earlier, concluded that gob fire was still burning or could reignite.

Withdrawal order issued under Federal §104(a) of Federal Coal Mine Health and Safety Act of 1969 was valid even though issued by inspector when inspector's supervisor actually made determination that imminent danger existed.

Miners prevented from working last hour of shift by withdrawal order issued under §104(a) of Federal Coal Mine Health and Safety Act of 1969 are entitled to compensation for one hour even though miners were idled for entire shift by §103(f) withdrawal order.

Miners who worked first four and one-half hours of shift after withdrawal order was issued are entitled under §110(a) of Federal Coal Mine Health and Safety Act of 1969 to compensation for final three and one-half hours of shift.

Federal Coal Mine Health and Safety Act of 1969 does not require that union, in applying for compensation for miners under §110(a), affirmatively show that all miners to whom compensation was due elected union to proceed on their behalf.

Miners awarded compensation under §110(a) of Federal Coal Mine Health and Safety Act of 1969 are entitled to interest on award even though miner's representative failed to specifically request interest until its post-hearing brief was filed.

69: 104(a)
WITHDRAWAL ORDER - Imminent Danger - Gob Fire - Discription of Condition in Order - 1969 Act, 24.50 24.03
69: 104(a)
WITHDRAWAL ORDER - Imminent Danger - Gob Fire - Factual Basis for Order - 1969 Act, 24.50 24.04
69: 104(a)
WITHDRAWAL ORDER - Imminent Danger - Issuance by Different Inspector - 1969 Act, 24.50 22.01
69: 103(f) 69: 110(a)
COMPENSATION - Idled Miners - Concurrent Withdrawal Orders - 1969 Act, 20.13
69: 110(a)
COMPENSATION - Idled Miners - Withdrawal Order - Final Hours of Shift - 1969 Act, 20.13
69: 110(a)
COMPENSATION - Representative of Miners - Election of Representative - 1969 Act, 20.13 35.04
69: 110(a)
COMPENSATION - Interest on Award - Late Request for Interest - 1969 Act, 20.13 35.50 35.08

1206
PEABODY COAL COMPANY
VINC 77-88
October 6, 1978
ALJ - Final
Unbound*

All electric face equipment falls under protection of 30 CFR 75.503 regardless of its location in mine beause permissibility specifications in 30 CFR 18 specifically include machines "intended for use" in face area of mines; accordingly, operator's contention that permissibility violation under 30 CFR 75.503 has not occurred because there was no showing that relevant shuttle car was located inby last open crosscut during inspection, is rejected, since that interpretation would allow operator to avoid permissiblity violation by moving equipment out of face area immediately preceeding inspectors arrival.

Opening between shuttle car junction box and junction box cover in excess of .009 inch os not an "unwarrantable failure" meriting issuance of withdrawal order under Section 104(c)(2) of 1969 Act because no evidence indicates that operator knew or should have known that relevant junction box was in impermissible condition at time of inspection, operator had complied with regulations concerning permissibility checks, and it was not established that operator failed to abate impermissible condition of junction box because of lack of due diligence.

Civil penalty assessed for violation of 30 CFR 75.503 because opening between shuttle car junction box and junction box cover exceeded .009 of an inch at time of withdrawal order was issued, is not mitigated by "economic losses" stemming from vacated withdrawal order where operator does not present evidence using time of repair as commencement of loss of production period for purposes of determining "economic loss," since had inspector issued notice of violation instead of order, operator would have been required under its company policy to immediately take machine out of service and remedy impermissible condition of junction box cover.

30 CFR 75.503
ELECTRICAL HAZARDS - Permissable Electric Face Equipment -- Maintenance, 75.0503
69: 104(c)(2)
WITHDRAWAL ORDERS - Unwarrentable Failure, 24.20
30 CFR 75.503
PENALTIES - Vacated Withdrawal Order - Economic Loss, 26.09

287
PEABODY COAL COMPANY
VINC 77-90
September 29, 1978
ALJ - Final
Unbound

30 CFR 75.400
69: 104(c)(2)

354
PEABODY COAL COMPANY
VINC 77-91
May 5, 1978
ALJ - Review Granted
Unbound

77: 104(c)(1)
30 CFR 75.400

145
PEABODY COAL COMPANY
VINC 77-91
December 12, 1979
RC - Reverse & Remand
12/79 p1962

322
PEABODY COAL COMPANY
VINC 78-1
December 13, 1978
ALJ - Final
Unbound

69: 104(c)(2)
43 CFR 4.507(e)
30 CFR 75.316

320
PEABODY COAL COMPANY
VINC 78-37-P
December 7, 1978
ALJ - Final
Unbound

30 CFR 75.511

245
PEABODY COAL COMPANY
VINC 78-52-P
June 29, 1978
ALJ - Final
Unbound

30 CFR 75.1303
30 CFR 75.2(c)
30 CFR 75.2(c)(3)
30 CFR 15.24(b)
30 CFR 18.2
30 CFR 75.2(g)(2)

16
PEABODY COAL COMPANY
VINC 78-386
May 2, 1979
RC - Reverse & Remand
5/79 p333

555
PEABODY COAL COMPANY
VINC 78-386
June 26, 1979
ALJ - Review Granted
6/79 p628

516
PEABODY COAL COMPANY
VINC 78-455-P
April 17, 1979
ALJ - Final
4/79 p237

30 CFR 75.316

813
PEABODY COAL COMPANY
VINC 78-457-P
May 5, 1980
ALJ - Final
5/80 p1045

PS

74
PEABODY COAL COMPANY
VINC 79-52-P
June 1, 1979
ALJ - Final
6/79 p473*

(Reference Docket Numbers 78-390 and 78-391)

Delay of two business days in issuance of citations charging violations of 30 CFR §75.1700 is not unreasonable where inspector was uncertain whether violation occurred and what corrective action should be recommended and consulted with his superiors because of unusual nature of matter, and there was no showing that delay was prejudicial to operator.

Operator is required to locate oil and gas wells and establish and maintain appropriate barriers of coal or other materials whenever oil and gas wells are located under 30 CFR §75.1700, whether or not wells are in existence when coal is mined.

Operator that is unable to prevent drilling of oil wells by another company and that had already mined coal which would have constituted 300-foot coal barrier around wells cannot be held liable for violation of 30 CFR §75.1700 for failure to establish and maintain such barrier, but can be held for violation because of its failure to notify Secretary that wells had been located and can be held liable for failure to maintain substitute barrier if that should thereafter be determined to be necessary.

MSHA's action requiring construction of additional barrier around oil wells to comply with 30 CFR §75.1700 is arbitrary and capricious where only evidence in support of additional barrier is testimony of inspector who was not expert in this field, inspector's superiors (who lacked any first-hand knowledge of mine) made determination that barrier was necessary, mine subsidence is normal condition, and there is little or no danger of accidental rupturing of an oil well and sudden release of gas under pressure.

30 CFR 75.1700
CITATIONS - Delay in Issuance - Reasonable Promptness, 24.03
30 CFR 75.1700
OIL AND GAS WELLS - Location of Wells - Barriers - Underground Coal Mines, 75.1700
30 CFR 75.1700
OIL AND GAS WELLS - Notification - Operator's Control - Underground Coal Mines, 75.1700
30 CFR 75.1700
OIL AND GAS WELLS - Additional Barriers - Determination of Need - Underground Coal Mines, 75.1700

38
PEABODY COAL COMPANY
VINC 79-67-P
March 29, 1979
ALJ - Final
3/79 p179*

Operator's failure to establish clear and understandable safety requirement designed to assure that all employees wear safety belts when in danger of falling, together with its failure to enforce such requirement with due diligence, requires finding of violation of 30 CFR §77.1710(g) for employee's working without fall protection on 18-inch-wide gear housing 16 feet above floor.

Mine operator's negligent enforcement of its safety belt requirement, illustrated by actions of several employees in climbing to top of gear housing in full view of foreman, warrants increase in penalty proposed by Secretary of Labor for violation of 30 CFR §77.1710(g) from $2,000 to $3,500.

Quality of mine operator's safety program is immaterial to question of violation of 30 CFR §77.1708; accordingly, in light of evidence that operator had established ongoing safety program which had been published and distributed to employees and was posted on some, though not all, of mine's bulletin boards, no violation is established.

30 CFR 77.1710(g)
PROTECTIVE CLOTHING - Safety Belts - Surface Coal Mines - Safety Rule, 77.1710 37.05
30 CFR 77.1710(g) 77: 110(i)
PENALTIES - Negligence - Increase in Proposal, 26.30
30 CFR 77.1708
SAFETY PROGRAM - Quality - Posting - Surface Coal Mines, 77.1708

942
PEABODY COAL COMPANY
VINC 79-67-P
March 29, 1979
ALJ - Final
3/79 p179

30 CFR 77.1710(g)
30 CFR 77.1708

511
PEERLESS EAGLE COAL COMPANY
HOPE 78-511-P
April 6, 1979
ALJ - Final
4/79 p209

30 CFR 75.200

535
PEERLESS EAGLE COAL COMPANY
HOPE 79-145-P
May 15, 1979
ALJ - Motion to Remand to A.O.
5/79 p399

77: 301(c)(2)

625
PEERLESS EAGLE COAL COMPANY
HOPE 79-145-P
September 27, 1979
ALJ - Final
9/79 p1448

PA
29 CFR 2700.63(b)

29
PEGGS RUN COAL COMPANY, INC.
PITT 76X207-P
May 18, 1979
RC
5/79 p350*

(Reference Old Docket Number IBMA No. 77-38) (Reference Docket Number PITT 76X219-P)

In light of operator's financial statement showing 1976 assets of $3,173,827, sales of $4,786,777, and officers' compensation of $150,000, penalty assessment of $830 was not inappropriate.

77: 110(i)
PENALTIES - Continuation in Business - Operator's Financial Statement, 26.40

237
PEGGS RUN COAL COMPANY, INC.
PITT 78-132-P
June 22, 1978
ALJ - Final
Unbound

PA

1119
PEGGY-O COAL COMPANY, INC.
VA 79-41
July 23, 1980
ALJ - Final
7/80 p1852*

(Reference NORT 79-87-P)

Operator violates 30 CFR §75.200 for failure to comply with approved roof control plan when plan requires installation of 30-inch roof bolts and operator installs 18-inch roof bolts, even though shorter bolts had been installed for purpose of holding electrical wires, because it would have been possible to install both shorter bolts and required 30-inch bolts.

30 CFR 75.200
ROOF SUPPORT - Roof Control Plan - Installation of Roof Bolts, 75.0200

1306
PENN ALLEGH COAL COMPANY, INC.
PENN 80-271-R
December 18, 1980
ALJ - Final
12/80 p3678

30 CFR 70.101

1181
PENN ALLEGH COAL COMPANY, INC.
PENN 81-6-R
October 21, 1980
ALJ - Review Granted
10/80 p3072

30 CFR 75-316

345
PENN ALLEGH COAL COMPANY, INC.
PITT 78-97-P
April 7, 1978
ALJ - Review Granted
Unbound

77: 318(i)
30 CFR 75.1710-1(a)

346
PENN ALLEGH COAL COMPANY, INC.
PITT 78-97-P
May 11, 1978
ALJ - Supplemental Memorandum
Unbound

77: 318(i)
30 CFR 75.1710-1(a)

788
PENN ALLEGH COAL COMPANY, INC.
PITT 78-97-P
January 3, 1979
RC - Grant Strike Motion
3/79 p5*

Motion to strike judge's supplemental opinion issued after date of decision which constitutes judge's "final disposition" of case within meaning of Section 113(d) of 1977 Act is granted, since issuance of multiple opinions threatens smooth functioning of review process and may tend to cast doubt on judge's impartiality.

29 CFR 2700.54 (I) 77: 113(d)
REVIEW COMM PROCEDURE - Judge's Supplemental Opinion - Motion to Strike - Review by Commission, 35.22 35.24
30 CFR 75.1710-1(a)

14
PENN ALLEGH COAL COMPANY, INC.
PITT 78-390-P
February 28, 1979
ALJ - Final
Unbound*

Ambiguity of operator's roof control plan with regard to when temporary supports are required precludes finding of violation of 30 CFR §75.200; MSHA, which approved plan, must make effort to clarify plan.

30 CFR 75.200
ROOF SUPPORT - Ambiguity of Plan - Temporary Supports, 75.0200

122
PENNSYLVANIA GLASS SAND CORPORATION
BARB 79-108-PM
August 29, 1979
ALJ - Final
8/79 p1191*

Citation for violation of 30 CFR §56.12-34 requirement that portable extension lights be guarded is vacated since light bulb in question was located six to ten feet behind workers and did not present shock or burn hazard.

Electrical wiring for start-stop switches that was permitted by bushings to be stripped back six inches constituted violation of 30 CFR §56.12-8 requirement that insulated wiring passing through metal frames be substantially bushed with insulating bushings.

General requirement in 30 CFR §56.16-9 that men stay clear of suspended loads applies to men working under any loads, whether it be "materials," as that term is commonly understood, or motors or other equipment.

Citation for violation of 30 CFR §56.16-9 requirement that men stay clear of suspended loads because there were no tracks and rolling dollies to change scrubber liners lacks particularity, since standard does not mention tracks and rolling dollies and condition described in citation does not state that miners had in fact worked under suspended loads.

Although Sections 103(g)(1) and (2) of 1977 Act authorize representative of miners to bring to attention of inspector existing condition which he believes constitutes violation, Act does not authorize inspector to base citation on past condition or practice orally brought to his attention by miner representative.

Condition or practice cited by inspector as base for citation in course of routine regular mine inspection must be based on his personal observations made during course of that inspection; however, evidence supporting citation issued during special investigation may be developed by means of observations and evidence outside of issuing inspector's personal knowledge.

Miner representative's oral communication of violative condition to inspector does not constitute substantial evidence and MSHA's attempts to use such "evidence" as support for citation and petition for assessment of civil penalty is rejected.

Citation for violation of 30 CFR §56.12-8 requirement that cables enter motor frames through proper fittings is vacated since citation refers to electrical wiring, not cables, and standard does not require that electrical wiring enter motor frames through proper fittings.

Separation of junction box from dust collector drive motor constituted a violation of 30 CFR §56.12-30 even though separation resulted from vibration rather than being "torn loose" as characterized in citation.

30 CFR 56.12-34
ELECTRICAL HAZARDS - Portable Extension Lights - Proximity to Workers - Shock or Burn Hazard - Sand Operations, 56.12 37.15
30 CFR 56.12-8
ELECTRICAL HAZARDS - Start-Stop Switches - Wind-up Reel - Insulated Bushings - Sand Operations, 56.12
30 CFR 56.16-9
MATERIALS HANDLING - Men Working under Suspended Loads - Suspended Motors - Sand Operations, 56.16
30 CFR 56.16-9
MATERIALS HANDLING - Suspended Loads - Tracks and Rolling Dollies - Particularity, 56.16 24.05
77: 103(g)(1)
INSPECTIONS - Past Violative Condition - Notification of Inspector by Miner Representative - Citation, 22.25 24.02
CITATIONS - Regular Inspections - Personal Observations - Special Investigation, 24.02 22.10
EVIDENCE - Violative Condition - Oral Communication to Inspector - Substantial Evidence, 35.20 35.30
30 CFR 56.12-8
ELECTRICAL HAZARDS - Electric Wiring - Motor Frames - Proper Fittings - Sand Operations, 56.12
30 CFR 56.12-30
ELECTRICAL HAZARDS - Junction Box - Separation from Drive Motor Vibration - Sand Operations, 56.12

1029
PENNSYLVANIA GLASS SAND CORPORATION
CENT 79-354-M
July 23, 1980
ALJ - Final
7/80 p1842

1165
PENNSYLVANIA GLASS SAND CORPORATION
WEVA 80-61-M
October 17, 1980
ALJ - Final
10/80 p2930

PA

411
PERMAC, INC.
NORT 79-69
March 30, 1979
ALJ- Final
3/79 p211

77: 105(d)
29 CFR 2700.18(a) (I)

1208
PETER WHITE COAL MINING CORPORATION
HOPE 77-268
June 29, 1978
ALJ - Final
Unbound*

Vacation of withdrawal order is justified when Mine Safety and Health Administration fails to prove that cited company was "operator" of area closed by order and fails to prove whether area involved was part of coal mine operated by company.

69: 104(a)
COVERAGE of ACT - Operator - Coal Mine, 5.104 5.106
30 CFR 77.1607(b)
30 CFR 77.1607(c)
30 CFR 77.1605(k)

51
PETER WHITE COAL MINING CORPORATION
HOPE 78-23
April 24, 1979
ALJ - Final
4/79 p255*

(Reference Docket Numbers 78-41, 78-42, 78-48 and 78-49)

Issuance of withdrawal order under §104(c)(2) of Federal Coal Mine Health and Safety Act of 1969 requires underlying §104(c)(1) withdrawal order as prerequisite.

Secretary's issuance of modifications of withdrawal orders seven months after mine operator applied for review of orders and one week before start of hearing, without giving opposing counsel notice of modifications until day of hearing, prejudiced operator and justifies vacation of withdrawal orders.

Withdrawal order issued under §104(b) of 1969 Act must be vacated where inspector failed to give any consideration to extension of time allowed for abatement of violation resulting in order, since basic requirement for issuance of such order is reasonable determination by inspector that time should not be extended.

Finding that withdrawal orders in review proceedings are invalid does not bar assessment of civil penalties in consolidated penalty proceedings, since invalidity of withdrawal order may not be considered as mitigating factor in civil penalty proceeding under §109 of 1969 Act.

69: 104(c)(2)
WITHDRAWAL ORDERS - Section 104(c)(2) of 1969 Act - Need for Underlying Order, 24.20
WITHDRAWAL ORDERS - Modification - Timeliness, 24.07
69: 104(b)
WITHDRAWAL ORDERS - Failure to Abate - Consideration of Extension, 24.10 28.10
69: 109
PENALTIES - Assessment Procedure - Effect of Invalidity of withdrawal Order, 26.05 24.01

243
PETER WHITE COAL MINING CORPORATION
HOPE 78-348
June 26, 1978
ALJ - Final
Unbound

77: 105(d)

442
PETER WHITE COAL MINING CORPORATION
HOPE 78-371
June 16, 1978
ALJ - Final
Unbound

77: 105(d)

11
PETER WHITE COAL MINING CORPORATION
HOPE 78-374
May 2, 1979
RC - Reverse & Remand
5/79 p327*

(Reference Docket Numbers 390-402, 431-432, 434-443, 445, 449-450, 452-453, 495-496, 498, 509, 535-544, 544-558 and 594)

Federal Mine Safety and Health Review Commission has jurisdiction under Federal Mine Safety and Health Act of 1977 to review, prior to proposal of penalties by Secretary of Labor, citation containing special findings under §104(e) of Act, even though alleged violations have been abated by mine operator.

77: 104(e)
REVIEW COMMISSION JURISDICTION - Reviewability of Citation, 35.02 24.30

391
PETER WHITE COAL MINING CORPORATION
HOPE 78-444
May 2, 1979
RC - Reverse & Remand
5/79 p330

77: 104(d)
77: 104(e)

254
PETER WHITE COAL MINING CORPORATION
HOPE 78-463
July 21, 1978
ALJ - Final
Unbound

77: 105(d)
77: 104(d)(1)

363
PETER WHITE COAL MINING CORPORATION
HOPE 78-495
July 21, 1978
ALJ - Review Granted
Unbound

77: 105(d)

455
PETER WHITE COAL MINING CORPORATION
HOPE 78-535
July 26, 1978
ALJ - Final
Unbound

77: 105(d)

447
PETER WHITE COAL MINING CORPORATION
HOPE 78-554
October 16, 1979
ALJ - Review Granted
Unbound

77: 105(d)
29 CFR 2700.18
77: 104(d)

458
PETER WHITE COAL MINING CORPORATION
HOPE 78-683
September 6, 1978
ALJ - Final
Unbound

77: 105(d)

459
PETER WHITE COAL MINING CORPORATION
HOPE 78-684
September 6, 1978
ALJ - Final
Unbound

77: 105(d)

1168
PHELPS DODGE CORPORATION
CENT 79-188-M
October 17, 1980
ALJ - Final
10/80 p2964*

Operator's failure to keep electrical leads on 120-volt AC-DC converter insulated constitutes violation of 30 CFR 55.12-32, and operator's argument that machine was used only for testing purposes and required low current is not relevant to existence of violation but to gravity of violation.

Unattended truck which was parked on grade without wheels blocked or turned toward bank constitutes violation of 30 CFR 55.9-37 even though there was little chance of truck colliding into work area, because if unattended truck were struck it could hit another vehicle or person.

Operator violated 30 CFR 55.15-5 because employee was observed walking on crane rail platform, 16 feet above floor, without using safety belt and line, and existence of handrails, walls on three sides, and availability of purlin to hold onto does not eliminate danger.

30 CFR 55.12-32
ELECTRICAL HAZARDS - Failure to Insulate Electrical Leads on Converter - Frequency of Use, 55.12
30 CFR 55.9-37
HAULAGE - Unattended Truck Parked on Grade - Failure to Block or Turn Wheels, 55.09
30 CFR 55.15-5
PERSONAL PROTECTION - Failure to Use Safety Belt and Line - Walking on Crane Rail Platform, 55.15

1066
PHELPS DODGE CORPORATION
DENV 79-561-PM
August 27, 1980
ALJ - Final
8/80 p2385*

Loss of power-assisted braking, whether sporadic or complete, on Pettibone Multicrane makes operation of vehicle unsafe because it is large vehicle of substantial weight and is driven on roads with steep grades which require full braking power, and operator's failure to provide adequate brakes violates 30 CFR 55.9-3.

Operator's failure to repair low gear of Pettibone Multicrane before equipment was used violates 30 CFR 55.9-2 which requires that equipment defects affecting safety be corrected before equipment is used, because use of vehicle on steep inclines without low gear would have been hazardous, and there was nothing to prevent use of vehicle on such inclines.

Provisions of 30 CFR 55.9-73 require that defective equipment which has been removed from service be tagged to prohibit further use until repairs are completed, and operator's failure to tag multicrane which had been removed from service because of defective brakes constitutes violation of standard.

Subforeman, who orders use of defective equipment with knowledge that equipment had been in shop and repairs had not been completed, can be held liable for violations of mandatory safety standards because Section 110(c) of Federal Mine Safety and Health Act enables Mine Safety and Health Administration to assess penalties against agent of corporate operator who "knowingly authorized, ordered, or carried out" violations of safety standards.

Section 110(c) of Federal Mine Safety and Health Act of 1977, which provides for imposition of civil penalties for knowing violations committed by agents of corporations but does not provide for imposition of civil penalties against agents of other entities, does not violate corporate agent's constitutional right to equal protection because classification bears rational relationship to legitimate governmental purpose of penetrating corporate shield to insure that civil penalty would have deterrent effect in corporate setting.

30 CFR 55.9-3
HAULAGE - Powered Mobile Equipment - Adequate Brakes, 55.09
30 CFR 55.9-2
HAULAGE - Correction of Equipment Defects - Low Gear on Vehicle, 55.09
30 CFR 55.9-73
HAULAGE - Defective Mobile Equipment - Taggind to Prevent Use, 55.09
77: 110(c)
COVERAGE OF ACT - Agents of Operators, 5.109
77: 110(c)
CONSTITUTIONALITY - Liability of Corporate Agents - Equal Protection, 5.05 5.109

843
PHELPS DODGE CORPORATION
WEST 79-349-DM
May 30, 1980
ALJ - Review Granted
6/80 p1271

77: 105(c)(1)

186
PHELPS DODGE CORPORATION
WEST 79-67-M
December 11, 1979
ALJ - Final
12/79 p2018*

Company violated requirement of 30 CFR §55.9-2 that haulage equipment be made safe before use since repairman returned to service truck with loose lug nuts.

30 CFR 55.9-2
HAULAGE - Loose Lug Nuts - Truck in Use - Metallic and Nonmetallic Open Pit Mines, 55.09

846
PHILLIPS URANIUM CORPORATION
CENT 79-281-M
June 5, 1980
ALJ - Review Granted
6/80 p1329

PS

1037
PHILLIPS URANIUM CORPORATION
CENT 79-281-M
August 4, 1980
RC - Remanding
8/80 p2050

1184
PHILLIPS URANIUM CORPORATION
CENT 80-208
October 27, 1980
ALJ - Review Granted
10/80 p3111

909
PHOENIX REDI-MIX COMPANY, INC.
WEST 79-13-M
April 22, 1980
ALJ - Final
4/80 p934*

Absence of cover plates on crusher electric shack and electric switches violates requirement of 30 CFR 56.12-32 that inspection and cover plates on electrical equipment and junction boxes be kept in place at all times except during testing or repairs when evidence shows that repair work being done at time of inspection involved digging trench and did not involve removal of cover plates on electrical equipment.

30 CFR 56.12-32
ELECTRICAL HAZARDS - Cover Plates On Enectrical Equipment, 56.12

689
PIKEVILLE COAL COMPANY
KENT 79-105
February 6, 1980
ALJ - Final
2/80 p301

PA

690
PIKEVILLE COAL COMPANY
KENT 79-165
February 6, 1980
ALJ - Final
2/80 p305

PS

221
PIKEVILLE COAL COMPANY
PIKE 77-91-P
May 23, 1978
ALJ - Final
Unbound

30 CFR 75.1725
30 CFR 75.517

288
PIKEVILLE COAL COMPANY
PIKE 78-61-P
October 4, 1978
ALJ - Final
Unbound

PS

275
PIKEVILLE COAL COMPANY
PIKE 78-76-P
September 19, 1978
ALJ - Final
Unbound

77: 110(i)
30 CFR 75.200
30 CFR 75.326

344
PIKEVILLE COAL COMPANY
PIKE 78-86-P
February 7, 1979
ALJ - Final
Unbound

30 CFR 75.400
30 CFR 75.403
30 CFR 75.1725

776
PIKEVILLE COAL COMPANY
PIKE 79-66
February 6, 1980
ALJ - Final
2/80 p307*

Imminent danger withdrawal order issued pursuant to §107(a) of 1977 Act because of accumulation of combustible material is vacated since there was only one potential source of ignition in area, inspector failed to issue order until two hours after discovery of accumulation, and dust samples were inadequate for analysis.

77: 107(a) 30 CFR 75.403
IMMINENT DANGER - Accumulation - Only One Potential Source of Ignition - Delay in Issuance of Withdrawal Order, 24.50 75.0403

779
PILOT COAL COMPANY
VA 79-144-D
February 20, 1980
ALJ - Final
2/80 p504*

Miner's refusal to drive hauler truck in fear of injury because of his lack of experience with vehicle is not activity protected by §105(c) of 1977 Act where there were no safety hazards related to road or hauler, and does not constitute discharge on which discrimination claim can be based.

77: 105(c)
DISCRIMINATION - Miner's Refusal to Drive Truck - Lack of Experience - No Safety Hazards, 30.055

102
PITTSBURGH COAL COMPANY
PITT 76-123-P
October 9, 1979
RC
10/79 p1468*

(Reference Old Docket Number IBMA No. 77-6)

Inoperable automatic uncoupling device on one side of mine cars constitutes violation of 30 CFR §75.1405 even though operator maintained operable uncoupling devices on other side of cars; purpose of standard, which is to prevent workers from being crushed between cars while manually uncoupling cars, is best effectuated by requiring that all uncoupling devices be maintained in operable condition.

30 CFR 75.1405
HAULAGE EQUIPMENT - Mine Cars - Inoperable Automatic Uncoupling Device - Underground Coal Mines, 75.1405

1150
POCAHONTAS FUEL COMPANY
VA 80-55
September 29, 1980
ALJ - Final
10/80 p2827

PS

1207
POMERLEAU BROS , INC.
WILK 79-4-PM
February 13, 1979
ALJ - Final
Unbound*

Administrative law judge has responsibility to make independent evaluation of facts relating to six statutory criteria set out in Section 110(k) of Federal Mine Safety and Health Act of 1977 before approving or denying proposed settlement for violations of standards promulagated under Act.

77: 110(k)
SETTLEMENTS - Judge's Duty to Make Independent Evaluation, 35.40

756
PONTIKI COAL CORPORATION
KENT 79-115-R
February 11, 1980
ALJ - Final
2/80 p370*

Form 7000-3 is sufficiently specific to comply with finding requirement of §104(d)(1) when citing violation caused by unwarrantable failure to comply because violation described on front of form is clearly associated with unwarrantable failure by information given on back of form.

Operator's knowledge that inadequate rock dust was applied in section of mine that produced large amount of methane gas while priority was given to installing supplemental roof support and maintaining high productivity in section establishes that §75.403 violation was unwarrantable.

77: 104(d)(1)
CITATIONS - Unwarrantable Failure - Specificity, 24.05
30 CFR 75.403
CITATIONS - Negligence - Known Deficiency of Rock Dust - Emphasis on Production and Roof Support, 75.0403 24.20

352
PONTIKI COAL CORPORATION
PIKE 78-420-P
February 9, 1979
ALJ - Review Granted
Unbound

30 CFR 75.316
30 CFR 75.200

119
PONTIKI COAL CORPORATION
PIKE 78-420-P
October 25, 1979
RC - Appealed - Dismissed
10/79 p1476*

Evidence that widths of entries and crosscuts exceeded maximum allowed by approved roof control plan by three feet or more at seven locations, even if undercuts of up to 12 inches are excluded from measurement, supports judge's finding of violation of 30 CFR §75.200.

Validity of withdrawal order may not be considered by Commission or its judges in civil penalty proceeding based on such order.

30 CFR 75.200
ROOF SUPPORT - Excessive Widths of Entries and Crosscuts - Underground Coal Mines, 75.0200
69: 109
COMMISSION JURISDICTION - Scope - Withdrawal Order - Consideration in Penalty Proceeding, 35.02 24.01

696
PONTIKI COAL CORPORATION
PIKE 78-420-P
February 11, 1980
ALJ - Final
2/80 p368

PA

523
PONTIKI COAL CORPORATION
PIKE 79-9
April 30, 1979
ALJ - Final
4/79 p283

77: 105(c)

782
PRINCESS SUSAN COAL COMPANY
WEVA 79-423-R
March 7, 1980
ALJ - Granted/Vacated/Appealed
3/80 p669*

(Reference D.C. Cir. Number 80-1449)

Miners' representative who accompanied inspector on "free silica technical investigation" is not entitled to be compensated by operator under Sec. 103(f) of Federal Mine Safety and Health Act of 1977 for time spent accompanying inspector because technical investigation is not Sec. 103(a) "regular" inspection carrying compensation rights.

77: 103(f)
INVESTIGATIONS - Technical Investigation - Compensation of Miner Representatives, 22.20

276
PRITT EVERETT L.
MORG 76-56-P
March 10, 1978
ALJ - Final
Unbound

30 CFR 75.200

681
PYRO MINING COMPANY
KENT 79-181
January 28, 1980
ALJ - Final
1/80 p105

PS

1171
PYRO MINING COMPANY
KENT 80-39
October 17, 1980
ALJ - Final
10/80 p3006

(Reference KENT 80-164)

30 CFR 75.202

261
QUALITY COAL COMPANY, INC.
BARB 78-136-P
August 22, 1978
ALJ - Final
Unbound

PS

1001
QUARTO MINING COMPANY
LAKE 79-119
September 22, 1980
ALJ - Review Granted
9/80 p2669

30 CFR 75.316

908
QUARTO MINING COMPANY
LAKE 80-44-R
April 18, 1980
ALJ - Final
4/80 p925*

Foreman is placed on sufficient notice of potential safety violation when miners make unusual inquiry concerning setting of roof supports so that failure to check for potential violation and failure to make required methane tests which would have led to discovery of violation constitutes an unwarrantable failure to comply with known violation, as negligence of foreman is imputed to operator and justifies issuance of withdrawal order pursuant to Section 104(d)(2) of Federal Mine Safety and Health Act of 1977.

77: 104(d)(2) 30 CFR 75.200
WITHDRAWAL ORDER-Improper Roof Sup.-Miners Unusual Inquiry-Violation Notice-Unwarrantable Failure to Comply, 24.20 24.25 75.0200

481
QUARTO MINING COMPANY
VINC 78-83-P
June 8, 1978
ALJ - Final
Unbound

PA

1264
RALPH FOSTER & SONS
WEST 79-397-M
November 20, 1980
ALJ - Review Granted
11/80 p3386

30 CFR 57.14-1
30 CFR 57.15-4

289
RANGER FUEL CORPORATION
HOPE 78-327-P
October 6, 1978
ALJ - Final
Unbound

30 CFR 75.200

1002
RANGER FUEL CORPORATION
WEVA 79-217-R
September 23, 1980
ALJ - Appealed
9/80 p2675

(Reference D.C. Cir. Number 80-2407)

77: 103(f)

719
RANGER FUEL CORPORATION
WEVA 79-378-R
March 10, 1980
ALJ - Final
3/80 p674*

Employees' use of continuous mining machine with remote control console without canopy in violation of 30 CFR §75.1710-1(a)(4) after several citations for such violations had been issued and foreman had issued warnings but taken no disciplinary action warranted issuance of withdrawal order pursuant to §104(c)(2) of Federal Mine Safety and health Act of 1977 based on mine operator's unwarrantable failure to comply with Act.

30 CFR 75.1710-1(a)(4)
CANOPIES OR CABS - Unwarrantable Failure Withdrawal Order - Warnings by Foreman - No Disciplinary Action, 75.1710 24.25

812
RANGER FUEL CORPORATION
WEVA 80-121
April 29, 1980
ALJ - Final
4/80 p985

77: 103(f)

740
RAVEN MINING COMPANY
NORT 79-78
January 23, 1980
ALJ - Final
1/80 p82*

Operator is entitled to independent review of validity and propriety of closure order issued under §104(b) of 1977 Act for failure to abate violative condition, despite failure to contest initial proposed civil penalty assessment.

Abatement time of four days given by inspector to comply with 30 CFR §75.1713-2 by installing communication system for medical emergencies was reasonable since operator's failure to have communication system stemmed from fact that operator had not paid telephone bill, which is matter solely in operator's control.

77: 104(b)
WITHDRAWAL ORDERS - Failure to Abate - Reviewability - Economic Loss, 24.10
30 CFR 75.1713-2
WITHDRAWAL ORDERS - Failure to Abate - Abatement Time - Medical Emergencies - Communication System, 24.10 75.1713

182
READYMIX SAND & GRAVEL COMPANY
WEST 79-66-M
December 5, 1979
ALJ - Final
12/79 p1987*

Company that operates preparation plant that processes by crushing, screening, and washing, sand and gravel from nearby noncontiguous mining pit comes within coverage of 1977 Act.

Definition of "mill" in Parts 55 and 56 of 30 CFR, which requires that mill be "at" mining pit, does not put limitation on Secretary of Labor's jurisdication over preparation plant since Secretary indicated in interagency agreement that he has retained jurisdication over milling facilities and company was cited for violation of 1977 Act, not for violation of any mandatory standard.

Refusal by operator to permit MSHA inspector on premises of crushing and cleaning plant for purpose of performing inspection pursuant to 1977 Act constitues violation of §103(a) of Act.

77: 3(h)(1)
COVERAGE - Mines - Preparation Plant - Not Contiguous to Mining Pit, 5.106 22.05
30 CFR 55.2
COVERAGE - Milling Facilities - Definition of "Mill" in Standards - Secretary of Labor's Jurisdiction, 5.106 40.10 55.0242 56.0242
77: 103(a)
INSPECTIONS - Crushing and Cleaning Plant - Refusual to Allow Inspector on Premises, 22.05

1255
RED ASH SMOKELESS COAL CORPORATION
VA 80-137
November 19, 1980
ALJ - Final
11/80 p3305

PS

663
RED LAVA PRODUCTS OF CALIFORNIA
DENV 78-578-PM
December 23, 1979
ALJ - Final
12/79 p2113

PS

6
REPUBLIC STEEL CORPORATION
MORG 76-21
April 11, 1979
RC - Appealed - Dismissed
4/79 p5*

(Old Docket Number IBMA No. 76-28) (Reference Docket Number MORG 76X95-P) (Reference Docket No. 76X95-P Old Docket Number IBMA No. 77-39 see also D.C. Cir. Number 79-11491)

Mine owner is liable under Federal Coal Mine Health and Safety Act of 1969 for violations committed by independent contractor engaged by owner to perform work on owner's premises.

Fact that only employees of independent contractor were endangered by contractor's violations does not warrent relieving mine owner of liability for such violations.

69: 3(d)
INDEPENDENT CONTRACTORS - Mine Owner's Liability under 1969 Act, 5.108
69: 4
INDEPENDENT CONTRACTORS - Miners Endangered - Shifting of Responsibility, 5.108 37.01

342
REPUBLIC STEEL CORPORATION
MORG 78-304-P
February 5, 1979
ALJ - Final
Unbound

30 CFR 77.102
30 CFR 77.1904
30 CFR 77.1110
30 CFR 70.501
30 CFR 75.326
30 CFR 75.305
30 CFR 75.400
30 CFR 75.1704

717
REPUBLIC STEEL CORPORATION
PENN 79-137
March 7, 1980
ALJ - Final
3/80 p666

PS

968
REPUBLIC STEEL CORPORATION
PENN 80-56-R
January 3, 1980
ALJ - Review Granted
Unbound

77: 105(d)

1138
REPUBLIC STEEL CORPORATION
PENN 80-56-R
October 9, 1980
RC - Vacating & Remanding
10/80 p2772*

Judge erred in dismissing without prejudice operator's contest of two Section 104(b) withdrawal orders until associated penalty proceedings arose because as set forth in Eastern Associated Coal Corporation [2 MSHC 1011] continuance, rather than dismissal without prejudice, is proper procedural device for postponing adjudication of contest of withdrawal order when, as here, postponement is warranted.

77: 104(b)
COMMISSION PROCEDURE-Operator's Contest of Sec 104(b) Withdrawal Orders-Appropriateness Dismissal Without Prejudice, 35.22 24.01
77: 105(d)

590
REPUBLIC STEEL CORPORATION
PIKE 78-410-P
August 7, 1979
ALJ - Final
8/79 p1055

PS

373
REPUBLIC STEEL CORPORATION
PITT 78-156-P
November 9, 1978
ALJ - Review Granted
Unbound

790
REPUBLIC STEEL CORPORATION
PITT 78-156-P
November 27, 1978
RC - Remand
3/79 p3*

(Reference Docket Numbers PITT 78-157-P, 78-396-P, 78-397-P, and 78-406-P through 78-410-P)

Judge's failure to state reasons for approval of settlement requires remand of case to judge for entry into record of settlement agreement, statement of reasons for approval of agreement, and statement of facts of record supporting judge's determination.

77: 113(d)
REVIEW COMM PROCEDURE - Approval of Settlement - Lack of Reasons - Remand to Judge, 35.40 35.24

359
REPUBLIC STEEL CORPORATION
PITT 78-156-P
May 15, 1979
ALJ - Review Granted
Unbound

30 CFR 75.200
30 CFR 75.1710-1(a)
30 CFR 75.1002
30 CFR 75.321
30 CFR 75.1002-1
30 CFR 75.1003(a)
30 CFR 75.517
30 CFR 75.1403
30 CFR 75.316
30 CFR 75.1100-2(c)
30 CFR 75.514
30 CFR 75.515

50
REPUBLIC STEEL CORPORATION
PITT 78-156-P
July 2, 1979
RC
7/79 p790*

(Reference Docket Numbers 78-157-P, 78-396-P, 78-397-P, 78-406-P, 78-407-P, 78-408-P, 78-409-P and 78-410-P)

Judge's decision to approve settlement between Secretary and operator is affirmed after judge supplemented decision approving settlement.

SETTLEMENTS - Judge's Reasons for Approval, 35.40

336
REPUBLIC STEEL CORPORATION
PITT 78-315-P
January 11, 1979
ALJ - Final
Unbound

30 CFR 75.200
30 CFR 75.402

168
REPUBLIC STEEL CORPORATION
PITT 78-459
November 16, 1979
ALJ - Final
11/79 p1889*

Citation for violation of 30 CFR §75.1707, which requires that intake escapeway be separated from belt and trolley haulage entries for entire length of such entries to beginning of working section, is vacated, since working section should be designated as being at belt tailpiece, rather than where coal is loaded on shuttle car, as Secretary of Labor contended.

30 CFR 75.1707
ESCAPEWAYS - Intake Air - Separation from Belt and Trolley Haulage Entries - Underground Coal Mines, 75.1707

413
REPUBLIC STEEL CORPORATION
PITT 79-55-P
March 22, 1979
ALJ - Final
3/79 p141

PS

265
REPUBLIC STEEL CORPORATION
WILK 78-300-M
August 25, 1978
ALJ - Final
Unbound

29 CFR 2700.15 (I)

744
RIO ALGOM CORPORATION
DENV 79-347
January 29, 1980
ALJ - Final
4/80 p784*

Imminent danger existed where broken timber caps and stripped plates on split bolts, which were caused by excessive weight on timbers, indicating recurring ground movement, two unintended roof falls had occurred, miners regularly worked in area, and there was only one exit from mine.

Issuance of imminent danger withdrawal order was appropriate even though company removed miners before order was issued because purpose of order is not only to cause withdrawal of miners, but to ensure that they remain out of affected areas until condition is corrected.

Whether condition or practice constitutes violation was not intended to be and is not controlling issue in proceeding to review an imminent danger withdrawal order.

30 CFR 57.3-22 77: 107(a)
IMMINENT DANGER - Broken Timber Caps - Excessive Weight - Ground Movement, 24.50 57.03
77: 107(a)
IMMINENT DANGER - Removal of Miners - Correction of Violative Condition, 24.50
77: 107(a)
IMMINENT DANGER - Violative Condition - Controlling Issue, 24.50

715
RITA COAL COMPANY
KENT 79-52
March 5, 1980
ALJ - Final
3/80 p652

30 CFR 75.200

256
RIVER COAL COMPANY
BARB 78-143-P
August 1, 1978
ALJ - Final
Unbound

77: 110(i)
30 CFR 77.410

660
RIVERSIDE CEMENT COMPANY
WEST 79-45-M
December 16, 1979
ALJ - Final
12/79 p2062

PS

187
RIVERSIDE CEMENT COMPANY
WEST 79-94-M
December 18, 1979
ALJ - Final
12/79 p2057*

(Reference Docket Numbers 79-96-M, 79-138-M, 79-176-M, 79-177-M, and 79-198-M)

Citation for violations of 30 CFR §57.14-1 is vacated because Secretary of Labor finds that unguarded rollers along conveyor belt constitute hazardous condition only when skirt boards are located along belt and mandatory standard cannot be administered on that basis.

30 CFR 57.14-1
MECHANICAL EQUIPMENT - Guards - Rollers Along Conveyor Belt - Metal and Nonmetallic Underground Mines, 57.14

902
RIVERSIDE CEMENT COMPANY
WEST 79-97-M
April 15, 1980
ALJ / Final
4/80 p895*

(Reference Docket Numbers WEST 79-319-M, 79-320-M, 79-324-M, and 79-95-M)

Operator violated requirements of 30 CFR §57.9-7 by operating unguarded conveyors with walkways which were not equipped with emergency stop devices or cords along their full length.

MSHA's failure to provide written requirements regarding regulation will result in only nominal penalties being assessed for violation of 30 CFR §57.9-7 which requires that unguarded conveyors be equipped with emergency stop devices along their full length, even though violation could result in injury.

30 CFR 57.9-7
HAULAGE - Unguarded Belt Conveyors - No Emergency Stop Devices, 57.09
30 CFR 57.9-7
PENALTIES - Assessment - MSHA Lack of Written Standard - Nominal Fine, 57.09 37.01

661
RIVERSIDE CEMENT COMPANY
WEST 79-98-M
December 18, 1979
ALJ - Final
12/79 p2064

PA

595
RIVERTON COAL COMPANY
HOPE 79-77
August 30, 1979
ALJ - Final
8/79 p1228

77: 105(c)(3)

601
ROBERT L HELMS CONSTRUCTION & DEVELOPMENT COMPANY
DENV 79-322-PM
September 5, 1979
ALJ - Final
9/79 p1335

PS

505
ROBINSON-PHILLIPS COAL COMPANY
HOPE 77-313-P
April 5, 1979
ALJ - Final
4/79 p146

30 CFR 75.200

793
ROCHESTER & PITTSBURGH COAL COMPANY
PITT 77-100
January 5, 1979
ALJ - Final
Unbound*

Operator's actions in violation of roof control plan did not constitute unwarrantable failure to comply with 30 CFR §75.200 when violation resulted from efforts to correct hazardous condition, and roof was properly supported as soon as possible.

No unwarrantable failure to comply with 30 CFR §75.202 occurred when operator regularly removed loose rock and overhang observed by inspector proved very difficult to take down.

Although defense of inapplicability of standard should have been pleaded in application for review of withdrawal order or at some time before trial, such defense will not be deemed waived at hearing unless waiver is evident or intended.

Notice of violation of requirement under 30 CFR §75.202 that suitable materials be provided for roof control is vacated since standard applies only to working places in mine and inspector cited company because of loose overhang in nonworking area.

30 CFR 75.200
  WITHDRAWAL ORDERS - Unwarrantable Failure - Roof Support, 24.20 75.0200
30 CFR 75.202
  WITHDRAWAL ORDERS - Unwarrantable Failure - Roof Control - Loose Overhange - Regular Removal, 24.20 75.0202
  REVIEW COMMISSION PROCEDURE - Consideration of Issues - Defense Raised during Hearing, 35.08 40.10
30 CFR 75.202
  ROOF SUPPORT - Loose Overhang - Nonworking Area - Applicability of Standard, 75.0202 40.10
77: 104

205
ROCHESTER & PITTSBURGH COAL COMPANY
PITT 77-109
March 22, 1978
ALJ - Final
Unbound

69: 104(c)
69: 104(b)

321
ROCHESTER & PITTSBURGH COAL COMPANY
PITT 77-116
December 8, 1978
ALJ - Final
Unbound

69: 104(c)(1)
30 CFR 75.316
30 CFR 75.400

1102
ROCK VALLEY CEMENT BLOCK & TILE
DENV 79-587-PM
July 25, 1980
ALJ - Final
7/80 p1906*

Elevated roadway used by trucks which are removing and loading materials for dike construction must be provided with berms alongside outer edges, as required by 30 CFR 56.9-22, because removal of materials and construction of dike itself is integral part of mining process and such activity is subject to regulations of Federal Mine Safety and Health Act of 1977.

Provisions of 30 CFR 56.9-22 which require that berms be provided alongside outer banks of elevated roadways applies to roadways which are used for short duration because potential hazard along unprotected roadway remains hazard whether it is of short or long duration, and operator violates standard by failing to provide berms alongside outer banks of elevated roadway which is used for hauling materials for dike construction project.

30 CFR 56.9-22
HAULAGE - Elevated Roadway - Berms Required - Applicability of Standard to Construction of Dike, 56.09
30 CFR 56.9-22
HAULAGE - Elevated Roadway - Berms Required - Regular Use of Roadway, 56.09

1289
ROCKITE GRAVEL COMPANY
LAKE 80-130-M
December 4, 1980
ALJ - Review Denied
12/80 p3543*

Mining activity conducted solely within a state is covered by Federal Mine Safety and Health Act because local coal mining activity has impact on supply and price of coal in interstate market.

COVERAGE OF ACT - Intrastate Mine - Effect on Interstate Commerce, 5.102
30 CFR 56.5-50

934
ROSE COAL COMPANY
LAKE 79-94
May 30, 1980
ALJ - Final
6/80 p1289*

(Reference Docket Number LAKE 79-100)

Miner owner violated §103(a) of Federal Mine Safety and Health Act of 1977 by refusing authorized representative of Secretary of Labor right of entry into its mine as there is no provision in law permitting mine owners to decide which inspectors can enter upon their property and which inspectors cannot.

77: 103(a)
INSPECTIONS - Refusal to Allow Inspector on Mine Premises, 22.01

1325
ROSE GRAVEL COMPANY
79-727
November 28, 1979
DISTRICT COURT
N/A*

Warrantless inspections of sand and gravel operations under Federal Mine Safety and Health Act of 1977 meet standards of reasonableness and pervasiveness of regulation of particular industry set forth by U.S. Supreme Court in Marshall V. Barlow's, Inc., 436 US 307(1978), and accordingly are consistent with Fourth Amendment to U.S. Constitution.

77: 103(a)
INSPECTIONS - Sand and Gravel Operations - Lack of Warant - Constitutionality, 22.05 5.05

438
ROYAL DARBY COAL COMPANY, INC.
BARB 77-108-P
April 19, 1978
ALJ - Final
Unbound

30 CFR 75.603
30 CFR 75.601
30 CFR 75.1722
30 CFR 75.304
30 CFR 70.203
30 CFR 75.1103
30 CFR 75.1107
30 CFR 75.305
30 CFR 75.303
69: 109(a)(1)
30 CFR 75.603
30 CFR 75.523-1

439
ROYAL DARBY COAL COMPANY, INC.
BARB 77-108-P
April 19, 1978
ALJ - Final
Unbound

30 CFR 75.403
30 CFR 75.516
30 CFR 75.400
30 CFR 75.301
30 CFR 75.515
30 CFR 75.402
30 CFR 75.302
30 CFR 75.1715
30 CFR 75.900
30 CFR 75.514

30 CFR 75.1704
30 CFR 75.1100-3

440
ROYAL DARBY COAL COMPANY, INC.
BARB 77-108-P
April 19, 1978
ALJ - Final
Unbound

30 CFR 75.1105
30 CFR 75.1102(e)
30 CFR 75.1714
30 CFR 75.503
30 CFR 75.316
30 CFR 75.200
30 CFR 75.901
30 CFR 75.326

343
ROYAL DARBY COAL COMPANY, INC.
BARB 78-387-P
February 7, 1979
ALJ - Final
Unbound

30 CFR 75.301

1316
ROYAL DARBY COAL COMPANY, INC.
KENT 80-220
December 30, 1980
ALJ - Final
12/80 p3753

29 CFR 2700.63(a)

47
RUSHTON MINING COMPANY
PITT 75-399-P
July 9, 1979
RC
7/79 p794*

(Reference Old Docket Number IBMA No. 76-37)

Judge did not err in conclusions regarding gravity of violations and properly considered statutory criteria set forth in §109(a)(1) of 1969 Act.

In determining whether pump at issue was "permanent pump" within meaning of 30 CFR §75.1105, judge correctly looked to purpose of standard and characteristics of pump.

69: 109(a)(1)
PENALTIES - Gravity of Violations - Statutory Criteria, 26.05 26.50
30 CFR 75.1105
FIRE PROTECTION - Pumps - Underground Coal Mines, 75.1105

228
RYANS CREEK COAL COMPANY
BARB-78-149-P
June 9, 1978
ALJ - Final
Unbound

PS

1312
S M LORUSSO & SONS, INC.
YORK 79-49-M
December 22, 1980
ALJ - Final
12/80 p3733

PS

1270
SALT LAKE COUNTY ROAD DEPARTMENT
WEST 79-365-M
November 25, 1980
ALJ - Review Granted
11/80 p3409

29 CFR 2700.27

991
SAN JUAN CEMENT COMPANY, INC.
BARB 79-222-PM
October 22, 1980
ALJ - Final
9/80 p2602*

Company which operates open pit limestone quarry where it extracts limestone for use in production of cement is subject to standards set forth in Part 56 of Title 30 of Code of Federal Regulations which apply to sand, gravel, and crushed stone operations, because, although company operates open pit quarry, cement production requires crushing of limestone to produce finely ground powder and thus qualifies as "crushed stone operation."

High-voltage powerline which is not located at least ten feet above vehicles that drive under line constitutes violation of 30 CFR 56.12-71, and operator is guilty of gross negligence because it was foreseeable that truck driver who was electrocuted might open hatch under powerline while waiting in line to be serviced.

Operator violates 30 CFR 56.20-11 when it fails to post warning signs or barricades in area where high-voltage powerlines cross main road and safety hazard is not apparent to individuals using road; finding of gross negligence is justified when operator fails to post signs or barricades after electrocution occurred in area because it was foreseeable that another electrocution could occur.

30 CFR 56.12
STANDARDS - Applicability - Open Pit Limestone Quarry Used for Producing Cement - Crushed Stone Operation, 40.10 56.12
30 CFR 56.12-71
ELECTRICAL HAZARDS - High-voltage Powerlines - Minimum Height - Forseeable Accident - Gross Negligence, 56.12 26.30
30 CFR 56.20-11
HAZARDOUS AREAS - Hidden Hazards - Requirement of Signs or Barricades - Gross Negligence, 56.20 26.30

930
SCHNEIDERS READY MIX, INC.
WEST 79-69-M
May 13, 1980
ALJ - Final
5/80 p1092*

Operator's failure to provide guards on conveyor belt unit which has wide enough clearance to allow individual to walk around it consitutes violation of 30 CFR §56.14-1 which requires that exposed moving parts which may be contacted by persons, and which may cause injury to persons, be guarded.

30 CFR 56.14-1
EQUIPMENT - Exposed Moving Parts - Conveyor Belt - Guarding, 56.14

1344
SCOTIA COAL MINING COMPANY
BARB 78-306
October 25, 1979
ALJ-Refusing Stay/Rev Granted
Unbound

(See RC decision at 3/80 p633)

747
SCOTIA COAL MINING COMPANY
BARB 78-306
March 31, 1980
RC - Review/Appealed
3/80 p633*

(Reference Docket Numbers BARB 78-307 through 78-333, 78-609-P, 78-609-P(B), and 78-610-P)

Stay of cases on administrative law judge's docket is unwarranted despite related criminal proceedings in federal district court because district judges have tools to mitigate prejudicial effect of publicity, discovery problems may be dealt with by appropriate protective orders, and public has interest in expeditious resolution of penalty cases.

REVIEW COMM PROCEDURE- Judge's Stay of Proceedings- Related Criminal Cases- Discovery Problems- Pretrial Publicity, 35.22 205.50

1230
SCOTIA COAL MINING COMPANY
BARB 78-306
November 14, 1980
US 6th Cir Court
N/A*

(Reference 6th Cir. Number 80-3303 and 81-3109)

Commission's order, which rejected operator's argument that administrative law judge erroneously denied stay of civil penalty proceedings and which left judge's order undisturbed on interlocutory review, is not reviewable by court of appeals since Commission's order is not final and has not adversely affected and aggrieved operator.

JUDICIAL REVIEW - Nonfinal Commission Order - Premature Appeal, 205.10

1346
SCOTIA COAL MINING COMPANY
BARB 78-306
January 0, 1981
RC - Denying Review
1/81 p0

(Reference Judge Kennedy, Interlocutory Review of April 30, 1980 order)

87
SCOTIA COAL MINING COMPANY
BARB 78-401-P
July 18, 1979
ALJ - Final
7/79 p909*

Evidence that shuttle car steering mechanism had been repaired prior to citation for violation of 30 CFR §75.1725 and inspector's uncertainty as to what he actually saw on day of citation justifies dismissal of petition of assessment of civil penalty.

Finding of violation of 30 CFR §75.1725 cannot be sustained when citation charged that violation existed on April 20, but steering mechanism of shuttle car, which was defective on April 19, had been repaired by April 20.

30 CFR 75.1725
MECHANICAL EQUIPMENT - Shuttle Car - Steering Mechanism - Inspector's Uncertainty, 75.1725
30 CFR 75.1725
MECHANICAL EQUIPMENT - Shuttle Car - Defective Steering Mechanism - Date of Violation, 75.1725 24.05

560
SCOTIA COAL MINING COMPANY
BARB 79-122-P
June 29, 1979
ALJ - Final
6/79 p769

PS

616
SEQUATCHIE VALLEY COAL CORPORATION
BARB 79-152-P
September 21, 1979
ALJ - Final
9/79 p1396

30 CFR 77.403(a)
30 CFR 77.1605(a)
30 CFR 77.410
30 CFR 77.1109(c)(1)

206
SEWELL COAL COMPANY
HOPE 77-310-P
March 28, 1978
ALJ - Final
Unbound

69: 109(a)
43 CFR 4.544(c)
30 CFR 75.400
30 CFR 75.1722(a)
30 CFR 75.202

381
SEWELL COAL COMPANY
HOPE 78-44
March 30, 1978
ALJ - Final
Unbound*

Operator's failure to comply with ventilation plan requirement that crosscut be provided at face of entry before place is "abandoned" consitutes violation of 30 CFR 75.316, since operator's failure to properly ventilate unit makes unit "abandoned" within meaning of 30 CFR 75.2(h).

Operator's placement of temporary supports eight feet from last permanent supports and its placement of danger board outby area of unsupported roof consitutes violation of 30 CFR 75.200 where roof control plan requires installation of temporary supports on five-foot centers to within five feet of face, rib, or temporary or permanent support and nothing in plan permits operator to set up danger board in lieu of providing temporary supports as soon as they were found to be missing.

Preshift examiner's immediate posting of danger board and report of hazardous roof condition so its existence could be entered in preshift examination record book does not absolve operator of charge of unwarrantable failure to comply with 30 CFR 75.200 where roof is hazardous and record does not show that section foreman acted with due diligence in having temporary supports installed as required by roof control plan.

Operator's failure to present any witness who had examined accumulations of loose coal and coal dust under conveyor belt drive and crossbelt in order to rebut inspector's conclusions of long-term accumulations based on his observations and admission of assistant mine superintendent establishes operator's failure to clean up accumulations within reasonable time after discovery in violation of 30 CFR 75.400.

30 CFR 75.316
VENTILATION - Approved System - Abandoned Unit, 75.0316
30 CFR 75.200
ROOF SUPPORT - Roof Control Plans - Implementation, 75.0200
30 CFR 75.200
ROOF SUPPOT - Roof Control Plans - Unwarrantable Failure to Comply, 75.0200 24.20
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation of Coal Dust - Proof of Existence, 75.0400 35.30
69: 104(c)(2)

472
SEWELL COAL COMPANY
HOPE 78-197-P
July 14, 1978
ALJ - Final
Unbound

100
SEWELL COAL COMPANY
HOPE 78-330-P
June 29, 1979
ALJ - Final
6/79 p720*

Operator violates 30 CFR §75.1100-3, the general fire firefighting equipment provision, when it runs belt drive units equipped with inoperable water sprinkler system, even though 30 CFR §75.1101-7 through §75.1101-11 set forth requirements specifically for water sprinkler systems.

Failure to install temporary supports in area that is covered with water and gob does not constitute violation of 30 CFR §75.200 when roof control plan requires all supports to be installed on solid footing.

Operator, in violation of 30 CFR §75.400, failed to clean up float coal dust accumulations in reasonable time after it should have known of them, in view of operator's unusual problems with float coal dust accumulations as a direct consequence of high velocity air currents moving through bin.

30 CFR 75.1100-3 30 CFR 75.1101-7 30 CFR 75.1101-11
FIRE PROTECTION - Belt Drives - Water Sprinkler Systems - Underground Coal Mines, 75.1100 75.1101
30 CFR 75.200
ROOF CONTROL - Temporary Supports - Lack of Solid Footing - Underground Coal Mines, 75.0200
30 CFR 75.400
COMBUSTIBLE MATERIALS - Cleanup Program - Reasonable Time - Underground Coal Mines, 75.0400

383
SEWELL COAL COMPANY
HOPE 78-529-P
October 6, 1978
ALJ - Review Denied
Unbound*

Operator violates provision of 30 CFR §75.1404-1 when its locomotive does not have adequate braking system, and there is evidence that locomotive is not being operated within limits of its design capabilities and at speed consistent with condition of haulage road.

30 CFR 75.1404
MANTRIPS - Braking SYSTEMS - Operation of Locomotive Within Design Capabilities, 75.1404

384
SEWELL COAL COMPANY
HOPE 78-529-P
November 15, 1978
RC - Denying Review
Unbound

30 CFR 75.1404

522
SEWELL COAL COMPANY
HOPE 78-619-P
April 30, 1979
ALJ - Final
4/79 p275

PS

557
SEWELL COAL COMPANY
HOPE 78-679-P
June 27, 1979
ALJ - Final
6/79 p691

30 CFR 75.2(h)
30 CFR 75.200
30 CFR 75.400

697
SEWELL COAL COMPANY
HOPE 78-744-P
February 12, 1980
ALJ - Review Granted
2/80 p392

30 CFR 75.1704
30 CFR 75.200

722
SEWELL COAL COMPANY
HOPE 79-6-P
March 12, 1980
ALJ - Review Granted
3/80 p690

29 CFR 2700.53
29 CFR 2700.60
29 CFR 2700.63

1097
SEWELL COAL COMPANY
HOPE 79-6-P
September 26, 1980
RC - Remanding
9/80 p2479*

Judge's denial of operator's request for continuance of hearing was abuse of discretion, because judge had initially solicited acceptable hearing dates from parties and then had scheduled hearing date without considering operator's response or inquiring of operator's counsel's availability.

77: 105(d)
COMMISSION PROCEDURE - Denial of Operator's Request for Continuance of Hearing - Abuse of Discretion, 35.22 35.18

647
SEWELL COAL COMPANY
HOPE 79-72-P
November 9, 1979
ALJ - Final
11/79 p1859

FS

419
SEWELL COAL COMPANY
HOPE 79-76
March 16, 1979
ALJ - Final
3/79 p117

77: 105(c)

72
SEWELL COAL COMPANY
HOPE 79-274
July 6, 1979
ALJ - Final
7/79 p864*

Neither 1977 Act nor 30 CFR §50.41 authorizes Secretary of Labor to inspect or copy mine operator's personnel records, which contain information both related and not related to reporting requirements of 30 CFR Part 50, without obtaining valid search warrant.

30 CFR 50.41
INSPECTIONS - Personnel Records - Need for Warrant, 22.05 50.41

680
SEWELL COAL COMPANY
WEVA 79-293
January 24, 1980
ALJ - Final
1/80 p96

30 CFR 75.1403-6(b)(3)

614
SEWELL COAL COMPANY
WEVA 79-31
September 20, 1979
ALJ - Review Granted
9/79 p1379

30 CFR 75.1710-1(a)

615
SEWELL COAL COMPANY
WEVA 79-31
September 20, 1979
ALJ - Opinion
9/79 p1381

30 CFR 75.1710-1(a)
77: 101(d)

1049
SEWELL COAL COMPANY
WEVA 80-264-R
August 11, 1980
ALJ - Revied Denied/Appealed
8/80 p2210*

(Reference D.C. Cir. Number 30-2283)

Although the Mine Safety and Health Administration gave tentative verbal approval and subsequent verbal disapproval of operator's dust control plan, operator's failure to adopt approved dust control plan consitutes violation of 30 CFR 75.316 where operator is aware that proposed plan was disapproved and had sufficient time to rework proposed plan to meet MSHA's requirements.

Existence of approved dust control plan, which had not been disapproved in writing and which operator subsequently abandoned in favor of proposed plan that was disapproved by the Mine Safety and Health Administration, is no defense to violation of 30 CFR 75.316 when approved plan did not show ventilation equipment in mine at time citation was issued.

Operator does not waive its right to raise issue of whether proposed dust control plan should have been approved by the Mine Safety and Health Administration when it files subsequent plan at time it is served with withdrawal order under Section 104(b) of 1977 Act, when operator disputes reasonableness of provisions in plan required by MSHA.

Operator fails to show that the Mine Safety and Health Administration's decision not to approve proposed dust control plan was incorrect and that it did not violate 30 CFR 75.316, where operator was given chance to adjust its controls to correspond to proposed plan for purposes of test of plan's efficacy but chose not to do so, and MSHA's test results showed that conditions during test were barely adequate to control dust and that average conditions during test were minimum acceptable.

30 CFR 75.316
VENTILATION - Dust Control Plans, 75.0316
30 CFR 75.316
VENTILATION - Dust Control Plans - Defenses, 75.0316
30 CFR 75.316
VENTILATION - Dust Control Plans - Right to Challenge Disapproval of Plans, 75.0316 35.08
30 CFR 75.316
VENTILATION - Dust Control Plans - Correctness of Disapproval of Plan, 75.0316

1321
SEWELL COAL COMPANY
WEVA 80-264-R
December 16, 1980
US Appeals - D.C. Cir
N/A*

(Reference D.C. Cir. Number 80-2283)

Court dismissed operator's petition for review.

264
SHADE COAL COMPANY
WILK 78-301-P
August 25, 1978
ALJ - Final
Unbound

PA
30 CFR 75.1200
30 CFR 70.201
30 CFR 75.900
30 CFR 75.901

356
SHAMROCK COAL COMPANY
BARB 76-656-P
June 16, 1978
ALJ - Review Granted
Unbound

30 CFR 75.1722(b)
30 CFR 75.1725
30 CFR 75.518
30 CFR 75.1100-2(e)
30 CFR 75.316
30 CFR 75.523-1(a)(2)
30 CFR 75.1100-2(e)(2)
30 CFR 70.250
30 CFR 75.313-1
30 CFR 75.403
30 CFR 75.503
30 CFR 75.603

357
SHAMROCK COAL COMPANY
BARB 76-656-P
June 16, 1978
ALJ - Review Granted
Unbound

30 CFR 77.1102
30 CFR 77.1109
30 CFR 77.410
30 CFR 77.1710-1
30 CFR 77.1605(k)
30 CFR 77.1713
30 CFR 70.246
30 CFR 71.600
30 CFR 75.300-2
30 CFR 75.200
30 CFR 75.504

358
SHAMROCK COAL COMPANY
BARB 76-656-P
June 16, 1978
ALJ - Review Granted
Unbound

30 CFR 75.1722
30 CFR 75.1103
30 CFR 75.400
30 CFR 75.1710
30 CFR 75.507
30 CFR 75.701
30 CFR 77.1104
30 CFR 75.523-1(a)

62
SHAMROCK COAL COMPANY
BARB 76-656-P
July 25, 1979
RC - Appealed
7/79 p799*

(Reference 6th Cir. Number 79-3541)

Penalty assessment of $75 for violation of 30 CFR §77.410 because of lack of backup alarm on tandem truck hauling soil for U.S. Forest Service is dismissed.

30 CFR 77.410
PENALTIES - Automatic Warning Device - U.S. Forest Service Truck - Surface Coal Mines, 26.01 37.20

362
SHAMROCK COAL COMPANY
BARB 78-82-P
October 30, 1978
ALJ - Review Granted
Unbound

77.110(i)
30 CFR 75.202
30 CFR 75.313-1
30 CFR 75.316
30 CFR 75.400
30 CFR 75.503
30 CFR 75.507
30 CFR 75.515
30 CFR 75.1100-2(b)
30 CFR 75.1103

367
SHAMROCK COAL COMPANY
BARB 78-82-P
October 30, 1978
ALJ - Review Granted
Unbound

30 CFR 75.1105
30 CFR 75.1107
30 CFR 75.1403-5(j)
30 CFR 75.1710
30 CFR 75.1722
30 CFR 77.215(h)
30 CFR 77.216-3(b)
30 CFR 77.504
30 CFR 77.505
30 CFR 77.512
30 CFR 77.516
30 CFR 77.1104

368
SHAMROCK COAL COMPANY
BARB 78-82-P
October 30, 1978
ALJ - Review Granted
Unbound

30 CFR 77.1109(d)
30 CFR 77.1605(k)
30 CFR 80.32
30 CFR 77.215

33
SHAMROCK COAL COMPANY
BARB 78-82-P
June 7, 1979
RC - Appealed
6/79 p469*

(Reference Docket Numbers 78-83-P, 78-84-P, 78-85-P, 78-98-P and 78-99-P and 6th Cir. Number 79-3393)

Assessment by judge of civil penalties totalling $16,673 is supported by substantial evidence; under §110(i) of 1977 Act, de novo assessment of penalties is within authority of Commission and its judges.

77: 110(i)
PENALTIES - Substantial Evidence - de Nova Assessment of Penalties, 26.05

423
SHAMROCK COAL COMPANY
BARB 78-137-P
March 21, 1979
ALJ - Final
3/79 p131

69: 109(a)(1)

422
SHAMROCK COAL COMPANY
BARB 78-138-P
March 21, 1979
ALJ - Final
3/79 p127

69: 109(a)(1)

798
SHAMROCK COAL COMPANY
BARB 78-152-P
January 30, 1979
ALJ - Appealed
Unbound*

(Reference Docket Number BARB 78-153-P-1 and 6th Cir. Number 79-3199)

Standard 30 CFR §75.202 was violated where following roof fall, miners were allowed to travel through area when loose roof was present and before operator began to support loose roof.

Unrecorded presence of loose roof along travelway constituted hazard in active workings which required reporting by preshift examiner, thus violating 30 CFR §75.303.

Unrecorded failure to properly rock dust roof of section did not constitute violation of 30 CFR §75.303 where inspector did not take dust samples, relied soley on visual observation and thereby failed to prove existence of violation or hazard.

Since 30 CFR §75.303 requires checking of all "active workings", preshift examiner's failure to report lack of ventilation in dead-end headings did not violate mandatory standard because headings were not being worked and miners were not normally required to travel through them.

Preshift examiner's failure to record lack of posted danger signs in several entries was not violation of 30 CFR §75.303 since miners were not required to pass places where alleged hazards existed and had no reason to be in these idle areas.

30 CFR 75.202
ROOF SUPPORT - Loose Roof - Travel byWorkers - Underground Coal Mines, 75.0202
30 CFR 75.303
PRESHIFT EXAMINATION - Failure to Record - Loose Roof along Travelway - Underground Coal Mines, 75.0303
30 CFR 75.402
PRESHIFT EXAMINATION - Rock Dusting - Dust Samples - Underground Coal Mines, 75.0303 75.0402
30 CFR 75 .303
PRESHIFT EXAMINATION - Ventilation - Dead-end Headings - Underground Coal Mines, 75.0303 75.00024
30 CFR 75.303
PRESHIFT EXAMINATION - Danger Signs - Underground Coal Mines, 75.0303

235

406
SHAMROCK COAL COMPANY
BARB 78-152-P
March 9, 1979
RC - Petition Denied Appealed
Unbound

(See also 6th Cir. Number 79-3199)

30 CFR 75.202
30 CFR 75.303
30 CFR 75.402

880
SHAMROCK COAL COMPANY
BARB 78-420-P
June 25, 1980
ALJ - Final
6/80 p1624

PS

75
SHAMROCK COAL COMPANY
BARB 78-494-P
June 5, 1979
ALJ - Final
6/79 p493*

Since original map of mine's ventilation system was not submitted into evidence and MSHA presented no case of dire necessity for reliance on testimony of inspector and sketch of ventilation system at hearing, such secondary evidence has no probative value under best evidence rule.

MSHA failed to prove violation of 30 CFR §75.329 since it introduced no evidence that pillar recovery had been inititated and bleeder systems are not required under standard until process of pillar recovery is at least begun.

EVIDENCE - Ventilation Map - Best Evidence Rule, 35.30
30 CFR 75.329
VENTILATION - Bleeder Systems - Underground Coal Mines, 75.0329

421
SHAMROCK COAL COMPANY
BARB 78-495-P
March 21, 1979
ALJ - Final
3/79 p123

69: 109(a)(1)

420
SHAMROCK COAL COMPANY
BARB 78-595-P
March 21, 1978
ALJ - Final
3/79 p119

69: 109(a)(1)

78
SHAMROCK COAL COMPANY
BARB 78-636-P
June 25, 1979
RC - Appealed - Remanded
6/79 p608*

Safety director's accident report to operator indicating violation is not "best evidence" and is not admission by operator when MSHA inspector did not actually see violation and MSHA did not call injured miner as eyewitness.

Evidence that accident was not caused by deviation from roof control plan precludes finding of violation of 30 CFR §75.200 when specifics of violation are not spelled out in charge.

EVIDENCE - Safety Director's Accident Report - "Best Evidence Rule" - Admission by Operator, 35.30
30 CFR 75.200
ROOF SUPPORT - Deviation from Plan - Adequacy of Notice, 75.0200 24.05

412
SHAMROCK COAL COMPANY
BARB 78-637-P
March 21, 1979
ALJ - Final
3/79 p137

69: 109(a)(1)

739
SHAMROCK COAL COMPANY
BARB 79-272-P
December 4, 1979
ALJ - Final
12/79 p1973*

Inspector's reliance on MSHA manual and interpretative memoranda in issuing citation for violation of 30 CFR §75.604 was improper since, in interpreting standard, such manuals and memoranda do not have status of mandatory Secretarial regulations.

Secretary of Labor's failure to conduct tests and studies to establish that company's use of square knots as cable splices rendered cables mechanically and electrically inefficient and fact that MSHA has approved use of square knots as cable splices warrant dismissal of citation for violation of 30 CFR §75.604.

30 CFR 75.604
STANDARDS - Administrative Interpretation - MSHA Manual - Interpretative Memorandum, 40.30 75.0604
30 CFR 75.604
ELECTRICAL HAZARDS - Cable Splices - Square Knot - MSHA's Failure to Test - MSHA Approval, 75.0604

1162
SHIRLEY'S SAND, INC.
CENT 80-85-M
October 14, 1980
ALJ - Final
10/80 p2922

PS

818
SIERRA READY MIX & CONTRACTING COMPANY
WEST 79-250-M
May 13, 1980
ALJ - Final
5/80 p1086

30 CFR 56.5-50

1239
SIGLER MINING
WEVA 80-519
November 5, 1980
ALJ - Review Granted
11/80 p3225

29 CFR 2700.28

504
SIMRON FUEL COMPANY
HOPE 78-422-P
April 5, 1979
ALJ - Final
4/79 p142

30 CFR 75.200

1326
SKELTON, INC.
78-A-1225
April 23, 1979
DISTRICT COURT
N/A*

Provision of Federal Mine Safety and Health Act of 1977 authorizing warrantless inspections of mines does not violate Fourth Amendment to U.S. Constitution.

Order under Section 108 of 1977 Mine Act enjoining mine operator from interfering with inspection will be limited in its effect to inspection at hand and necessary follow-up inspections, and will not apply to unrelated future inspections.

INSPECTIONS - Need for Warrant - Constitutionality of Act, 22.05 5.05
77: 108
INSPECTIONS - Refusal of Entry - Scope of Injuctive Relief - Section 108, 22.05 205.40

515
SKYVIEW MINING, INC.
PIKE 78-365-P
April 17, 1979
ALJ - Final
4/79 p230

30 CFR 75.523
30 CFR 75.200
77: 110(i)

1231
SMITTY BAKER COAL COMPANY, INC.
NORT 71-96
December 4, 1980
RC
12/80 p3463*

(Reference IBMA No. 72-21)

Remedies in discrimination cases should be suited to individual facts of each case and designed to eliminate effects of illegal discrimination; accordingly, where general manager of coal company discriminated against miner in violation of Section 110(b) of 1969 Act and subsequently incorporated new mining company in different location, reinstatement of miner at new company, with such seniority and benefits as he would have had if illegal discirmination had not occurred, is appropriate remedy in order to fully compensate miner for effects of discrimination.

Coal company, which purchased lease and equipment from operator that violated discrimination clause of 1969 Act and which reopened one of its mines, is jointly and severally liable, as successor, for illegal act of discrimination, where purchaser had sufficient notice of litigation, predecessor cannot provide complete relief, there was substantial continuity of business operations and purchaser operated substantial equivalent of predecessor's plant.

Successor coal company is not liable for independent act of discrimination in violation of 1969 Act for alleged failure to hire miner, because miner did not file timely application for review with Secretary and miner only alleged in motion to add successor company as respondent in proceeding against predecessor operator that it was liable as successor for violation committed by predecessor.

69: 110(b)
DISCRIMINATION - Remedy - Reinstatement at Newly Acquired Mining Company, 30.50
69: 110(b)
DISCRIMINATION - Remedy - Liability of Successor Employer for Predecessor's Acts, 30.50
69: 110(b)
DISCRIMINATION-Liability of Successor Coal Co. - Independent Act of Discrimination-Timeliness of Application, 30.03

1021
SOLAR FUEL COMPANY
PENN 79-142
July 3, 1980
ALJ - Review Granted
7/80 p1732

30 CFR 75.503

1071
SOLAR FUEL COMPANY
PENN 80-96
August 27, 1980
ALJ - Final
8/80 p2433*

Citation for violation of 30 CFR 70.260, which requires that at conclusion of each production shift in sampling cycle operator promptly collect and transmit respirable dust samples, must be vacated when operator produces evidence which conclusively establishes that valid samples were taken as required and were transmitted to MSHA in manner prescribed by regulation.

30 CFR 70.260
RESPIRABLE DUST - Sampling Procedures - Transmission of Samples, 70.0260

683
SOLAR FUEL COMPANY
PITT 79-200-P
January 28, 1980
ALJ - Final
1/80 p155*

Presence of accumulated coal dust, tobacco spit, and odor of urine in change room of mine constitutes violation of 30 CFR §75.1712-3(a) which requires that bathing facilities, change rooms, and sanitary toilet facilities be kept in clean and sanitary condition.

30 CFR 75.1712-3(a)
BATH HOUSES - Maintenance in Sanitary Condition, 75.1712

1164
SOUTH DAKOTA CEMENT PLANT
CENT 80-297-M
October 16, 1980
ALJ - Final
10/80 p2928

FA

37
SOUTH HOPKINS COAL COMPANY
BARB 77-184
April 5, 1979
ALJ - Rev Dismissed/Appealed
4/79 p126*

Employee's initiation of complaint concerning roof safety with his supervisor is sufficent to invoke §110(b) of Federal Coal Mine Health and Safety Act of 1969, whether or not employee intended complaint to reach federal official, since notification of foreman was recognized as first step in safety report or dispute procedure at mine, and it was most practical means of registering safety complaint in mine at that time.

Legitimate safety dispute over roof condition is at issue although condition does not present immediate danger or constitute mandatory safety standard violation, and despite employee's reputation for excessive fear of top, his substandard work, and supervisor's personal examination of top early in shift, since roof in one area is rough, containing cracks up to an inch in depth, is warped and sagging, and presure on it is great enough to damage prop wedges.

Employee's refusal to work under what he considered to be bad roof, when legitimate safety dispute was at issue, is protected activity under §110 of 1969 Act.

Supervisor's statement that he had no other work for employee to do, inferring that employee would be sent home with loss of day's pay if he persisted in refusing to work under what he considered to be bad roof, and subsequent discharge, when legitmate safety dispute was at issue, are discriminatory acts improperly motivated by that refusal in violation of 1969 Act §110.

Employee found to have been discharged in violation of §110(b) of 1969 Act is due relief including back pay, difference between income employee would have received had he continued working offset by income actually received in same period from other sources, interest on back pay, medical expenses, attoreny's fees, costs incurred by attorneys, and costs incurred directly by employee.

Requiremenc under 1969 Act §110(b)(2) that application to Secretary for review of alleged discrimination be made within thirty days of violation is in nature of statute of limitations, rather than jurisdictional requirement, and therefore can be tolled or extended upon showing of extenuating circumstances.

Employee's failure to apply to Secretary for review of alleged discrimination within limitations period of 1969 Act §110(b) is justified since at time of discharge, employee was unaware of his rights under Act to challenge employer's action and was misled by Mining Enforcement and Safety Administration inspector as to existence of these rights.

69: 110(b)
DISCRIMINATION - Protected Activity - Safety Complaints to Operator or Union, 30.053
69: 110(b)
DISCRIMINATION - Protected Activity, 30.051
69: 110(b)
DISCRIMINTATION - Protected Activity - Refusal to Work under Dangerous Conditions, 30.055
69: 110(b)
DISCRIMINATION - Grounds for Discharge, 30.10
69: 110(b)
DISCRIMINATION - Remedies, 40.50
69: 110(b)(2)
DISCRIMINATION - Initial Filing - Timeliness, 35.103 30.03
69: 110(b)
DISCRIMINATION - Late Filing - Justification, 30.03

1331
SOUTH HOPKINS COAL COMPANY
BARB 77-184
February 0, 1980
US Appeals 6th Cir, Appeal Dis
Unpublished

(Reference 6th Cir. Number 79-3341)

1244
SOUTH UNION COAL COMPANY
WEVA 80-246-D
November 10, 1980
ALJ - Final
11/80 p3258

77: 105(c)(1)

745
SOUTHERN OHIO COAL COMPANY
LAKE 79-24
January 31, 1980
ALJ - Final
1/80 p270*

Failure of inspector to furnish to operator copy of miner's request for special inspection under §103(g) of 1977 Act does not render search illegal or citations issued pursuant to search invalid because purpose of requirement that copy be furnished to operator is only to notify operator that miner is engaged in protected activity.

77: 103(g)
INSPECTIONS - Copy of Miner's Request - Notification of Operator - Protected Activity, 22.25

117
SOUTHERN OHIO COAL COMPANY
VINC 79-98
October 19, 1979
RC
10/79 p1470*

Indefinite continuance of hearing on withdrawal order is not appropriate sanction for operator's failure to comply with discovery commitment.

REVIEW COMMISSION PROCEDURE - Indefinite Continuance - Withdrawal Order Hearing, 35.22 35.18

486
SOUTHERN OHIO COAL COMPANY
VINC 77-112
June 9, 1978
ALJ - Appealed - Remanded
Unbound

(Reference 6th Cir. Number 81-3007)

69: 110(b)(1)

1278
SOUTHERN OHIO COAL COMPANY
VINC 77-112
December 9, 1980
RC - Appealed
12/80 p3472*

(Reference 6th Cir. Number 81-3007)

Refusal of miners to cross large body of water which existed in route to their work-place because they believed it to be unsafe is protected by Section 110 of 1969 Coal Act and foreman's refusal to assign them alternate work violates Section 110 because foreman testified that reason he refused to assign alternate work was because of miners' refusal to cross water.

69: 110(b)(1)
DISCRIMINATION - Miners' Refusal to Cross Water - Foreman's Refusal to Assign Alternate Work, 30.10

572
SOUTHERN OHIO COAL COMPANY
VINC 79-108-P
July 27, 1979
ALJ - Final
7/79 p960

PS

163
SOUTHERN OHIO COAL COMPANY
VINC 79-109-P
October 19, 1979
ALJ - Final
10/79 p1642*

(Reference Docket Numbers 79-111-P, 79-115-P, 79-148-P, 79-112-P, 79-110-P, 79-114-P, 79-141-P)

Positioning of brattice curtain, which is to serve as temporary stopping separating intake from return air, determines whether battery charger unit is located in intake or return air and, accordingly, whether 30 CFR §75.507 has been violated.

Issue of whether battery charger unit was energized at time of inspection goes to question of gravity of violation for assessing civil penalty but may not serve as absolute defense to violation of 30 CFR §75.507.

Fact that Secretary did not establish that workers regularly passed under wire was not controlling as to whether violation of 30 CFR §75.1003 occurred since standard also requires that wires be guarded where men are required to work.

Fact that Secretary of Labor did not establish that trolley wires were energized at time citation was issued is not controlling as to whether violation of 30 CFR §75.1003 occurred but goes to question of gravity of violation for assessing civil penalty.

Although inspector did not actually observe workers passing under unguarded trolley wires, his unrebutted conclusion that men passed under wires based on impossibility of unloading supplies in any other manner established violation of 30 CFR §75.1003.

Violation of 30 CFR §75.503 was established where presence of worn or burned out spot on cable reel on shuttle car, which resulted in destruction of insulation, rendered car in nonpermissible condition.

Standard, 30 CFR §75.200 was violated where roof control plan required that temporary roof supports be installed within 15 minutes after loading has been completed and inspector determined passage of more than 15 minutes from fact that two-thirds of loading cycle had been completed and it would take more than 15 minutes to accomplish this.

Where inspector failed to take detailed notes or otherwise establish that average mining height where roof bolting machine was operating was more than 42 inches and thus required use of canopy, citation for violation of 30 CFR §75.1710-1(a)(4) was vacated.

Violation of 30 CFR §75.1405 was established where uncoupling devices on rock haulage cars were broken and cars could not be coupled without someone going between ends of cars.

Company's defense that 30 CFR §75.1405 was inapplicable to surface work area of underground mine was rejected because track haulage system is integral part of underground mine, rock haulage cars were used underground, and surface storage area where cars were located when citation was issued was part of underground mine.

Company's defense that haulage cars were used sporadically rather than regularly and therefore 30 CFR §75.1405-1 did not apply was rejected because haulage cars were used in loading out materials resulting from "shooting out" of overcasts, which is regular activity in coal mining.

Violation of 30 CFR §75.200 was established where company failed to install temporary roof supports at end of mining cycle as required by its roof control plan and company failed to establish that mining cycle had not been completed.

30 CFR 75.507
ELECTRICAL HAZARDS - Power Connection Points - Location in Intake & Return Air - Underground Coal Mines, 75.0507
30 CFR 75.507
ELECTRICAL HAZARDS - Power Connection Points - Failure to Energize not Defense - Assessment of Civil Penalty, 75.0507 26.50 37.01

30 CFR 75.1003
ELECTRICAL HAZARDS - Guarding of Trolley Wires - Area where Miners Required to Work, 75.1003
30 CFR 75.1003
ELECTRICAL HAZARDS - Failure to Energize Trolley Wires Not a Defense - Assessment of Civil Penalties, 75.1003 26.50 37.01
30 CFR 75.1003
ELECTRICAL HAZARDS - Guarding of Trolley Wires - Workers Passing under Wires, 75.1003
30 CFR 75.503
ELECTRICAL HAZARDS - Permissible Electric Face Equipment - Maintenance - Burned Out Cable Reel, 75.0503
30 CFR 75.200
ROOF SUPPORT - Roof Control Plan - Temporary Roof Supports - Underground Coal Mines, 75.0200
30 CFR 75.1710-1(a)(4)
CANOPIES - Electric Face Equipment - Average Mining Heights, 75.1405 22.01
30 CFR 75.1405
HAULAGE EQUIPMENT - Automatic Couplers - Broken Couplers on Haulage Cars, 75.1405
30 CFR 75.1405
HAULAGE EQUIPMENT - Applicability of Standard to Surface Areas, 75.1405 37.01
30 CFR 75.1405-1
HAULAGE EQUIPMENT - Haulage Cars - Regular Mining Activity - Underground Coal Mines, 75.1405 37.01
30 CFR 75.200
ROOF SUPPORT - Roof Control Plan - Temporary Roof Supports - Underground Coal Mines, 75.0200

573
SOUTHERN OHIO COAL COMPANY
VINC 79-113-P
July 27, 1979
ALJ - Final
7/79 p962

PS

575
SOUTHERN OHIO COAL COMPANY
VINC 79-140-P
July 27, 1979
ALJ - Final
7/79 p966

PS

574
SOUTHERN OHIO COAL COMPANY
VINC 79-149-P
July 27, 1979
ALJ - Final
7/79 p964

PS

695
SOUTHERN OHIO COAL COMPANY
VINC 79-227-P
February 8, 1980
ALJ - Review Granted
2/80 p350

30 CFR 75.200
30 CFR 75.200-14
30 CFR 75.200-14(a)
30 CFR 75.200-14(c)
30 CFR 75.200-14(d)(1)
30 CFR 75.200-14(e)
30 CFR 75.200-14(f)
30 CFR 75.200-14(b)

1038
SOUTHERN OHIO COAL COMPANY
WEVA 79-393
August 4, 1980
ALJ - Final
8/80 p2140*

Reduction of proposed penalty for ventilation violation is warranted when evidence established that condition was attributable to negligence of miners and their disregard for compliance with mine safety law, because miners who deliberately endanger themselves and their fellow workers by conscious disregard for compliance with mandatory safety standards should be liable for their actions under the civil and criminal sanctions provided for under Section 110(c) of Federal Mine Safety and Health Act of 1977.

Increase in proposed penalty for accumulation violation is justified when evidence establishes that violation was attributable to operator's failure to provide miner to clean up accumulation, and excuse of absenteeism is unacceptable in mitigation of noncompliance since operator who cannot operate safely should shut down until workforce sufficient to permit safe operation is available.

77: 110(c)
PENALTIES - Reduction - Miners' Knowing Disregard for Compliance, 26.09 37.25
77: 110(c)
PENALTIES - Negligence of Opwerator - Excuse of Absenteeism, 26.09 26.30

1311
SOUTHERN OHIO COAL COMPANY
WEVA 80-487-D
December 18, 1980
ALJ - Final
12/80 p3728

Nonunion management employee is "miner" within scope of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, since term "miner" includes any individual working in mine; and foreman is entitled to protections afforded by Section 105(c).

Discharge of miner was not unlawful when decision to discharge was made without knowledge of any alleged hazard or protected activity, but was made upon completely independent ground of operator's concern that miners work until end of shift.

77: 105(c)(1)
COVERAGE OF ACT - Miners - Inclusion of Non-Union Management Employee, 5.105 30.01
77: 105(c)(1)
DISCRIMINATION - Refusal to Work - Knowledge of Protected Activity, 30.055

766
SOUTHWESTERN ILLINOIS COAL CORPORATION
LAKE 79-53
February 14, 1980
ALJ - Final
2/80 p456*

Inspector's testimony that worker was helping welder to cut metal plate and was two and a half feet from cutting torch without wearing goggles supports finding of violation of 30 CFR §77.1710(a) despite inspector's uncertainty as to exactly what worker was doing when citation was issued and how far inspector was from worker when making observation.

30 CFR 77.1710(a)
PROTECTIVE CLOTHING - Goggles - Welder's Assistant - Cutting Torch, 77.1710

1193
SOUTHWESTERN ILLINOIS COAL CORPORATION
LAKE 80-341
October 30, 1980
ALJ - Final
10/80 p3187

30 CFR 45.6

871
ST. CLAIR LIME COMPANY
DENV 79-530-PM
June 23, 1980
ALJ - Final
6/80 p1555*

Allowing miners to engage in scaling work while in aerial bucket, which is suspended 25 feet above mine floor, without wearing safety belts violates 30 CFR §57.15-5, which requires that safety belts be worn where there is danger of falling, because scaling process requires men to shift their weight and position while in bucket so that there is danger of falling from bucket and danger of falling rock striking bucket and causing it to tip over.

30 CFR 57.15-5
PERSONAL PROTECTION - Safety Belts - Required While Working in Aerial Bucket, 57.15

642
ST. JOE ZINC COMPANY
WILK 79-41-PM
October 26, 1979
ALJ - Final
10/79 p1699

30 CFR 57.15-4
30 CFR 57.9-2
30 CFR 57.3-22
30 CFR 57.3-20

674
ST. JOE ZINC COMPANY
YORK 79-50-M
January 7, 1980
ALJ - Final
1/80 p12

PS

1296
ST. JOE ZINC COMPANY
YORK 80-86-DM
October 28, 1980
ALJ - Final
12/80 p3594

77: 105(c)(1)
77: 103(f)

1295
ST. JOE ZINC COMPANY
YORK 80-86-DM
December 15, 1980
ALJ - Final
12/80 p3593

558
STANDARD BUILDING MATERIAL COMPANY
DENV 79-60-PM
June 28, 1979
ALJ - Final
6/79 p702

30 CFR 56.14-1
30 CFR 56.16-5
30 CFR 56.11-6

66
STANSBURY COAL COMPANY
DENV 77-80-P
May 16, 1979
ALJ - Final
5/79 p404*

(Reference Docket Numbers 77-81-P, 77-98-P and 78-13-P)

Failure of operator to install specific numbers of water sprays to particular locations does not constitute violation of 30 CFR §75.316, where ventilation plan for mine not yet in operation requires operator to install water sprays in transfer, curshing, and loading points after running engineering surveys to determine exact number of sprays needed, their location, and working pressures and volumes, since plan merely requires operator to make reasonable efforts to complete engineering studies and install what it determines to be necessary sprays as mining commences.

MSHA's laboratory analysis of 10 mine air samples that reveals average respirable dust concentration in excess of applicable limit in 30 CFR §70.100(b), does not establish violation of that section, in light of Interior Board of Mine Operations appeals decision that air sampling techniques and laboratory analysis methods used do not screen out particulates larger in size than those defined as respirable dust in 1969 Coal Act of regulations issued pursuant to Act.

Operator's development of coalbed seam without submission of preliminary plans, including roof control and ventilation plans to MESA district manager, consitutes violation of 30 CFR §75.1721(a), since driving of 20-foot wide entry for about 175 feet and extraction of large block of coal from 8-foot thick seam constitute "development" of coalbed.

Operator's failure to have plan for regularly scheduled cleanup effectively minimizing float coal dust accumulation constitutes violation of 30 CFR §75.400.

Lack of guards on conveyor belt drive pulleys constitutes violation of 30 CFR §75.1722 although inspector did not see belt in operation, since regulation simply requires that drive "shall be guarded," and it is unnecessary that belt drive actually be observed in operation.

30 CFR 75.316
VENTILATION - Ventilation System Plan - Water Sprays - Underground Coal Mines, 75.0316
30 CFR 70.100(b)
RESPIRABLE DUST - Sampling Techniques and Laboratory Analysis - Underground Coal Mines, 70.0100
30 CFR 75.1721(a)
OPENING OF MINE - Development of Coalbed, 75.1721
30 CFR 75.400

COMBUSTIBLE MATERIALS - Float Coal Dust - Cleanup Plan - Underground Coal Mines, 75.0400
30 CFR 75.1722
MECHANICAL EQUIPMENT - Guarding - Failure to See Equipment in Operation - Underground Coal Mines, 75.1722 35.30

390
STASH BROTHERS, INC.
PITT 79-44-P
November 15, 1979
ALJ - Review Vacated
11/79 p1793

59
STOUDT'S FERRY PREPARATION COMPANY
78-2364
July 19, 1979
3rd Cir Court Appealed
N/A*

Company that purchases material dredged from riverbed, extracts burnable product "akin" to coal, which is sold as low-grade fuel, and sells remaining sand and gravel, comes within coverage of Mine Act.

Warrantless inspections under Mine Act withstand constitutional challenge since mining industry is pervasively regulated and Mine Act inspection provision places limitations on use of inspection and is more narrowly drawn than comparable Occupational Safety and Health Act provision.

COVERAGE - Mines - Material Dredges from Riverbed - Preparation of Burnable Product, 5.106
77: 103(a) 69: 104(a)
INSPECTIONS - Lack of Warrant - Constitutaionality, 22.05

158
STOUDT'S FERRY PREPARATION COMPANY
79-614
January 7, 1980
US SUPREME COURT
N/A*

The court refused to review decisions in Kraynak v. Marshall and Stoudt's Ferry v. Marshall.

706
STOUDT'S FERRY PREPARATION COMPANY
WILK 79-149-P
February 15, 1980
ALJ - Final
2/80 p469

PS

526
SUE-JAN COAL COMPANY
BARB 79-117-P
April 30, 1979
ALJ - Final
4/79 p292

PA

404
SULLY MILLER CONSTRUCTION COMPANY
DENV 78-454-M
November 2, 1978
ALJ - Final
3/79 p113

77: 105(d)

784
SUMMITVILLE TILES, INC.
VINC 79-213-PM
March 19, 1980
ALJ - Final
3/80 p740*

It is immaterial whether MSHA inspector obtained knowing consent of operator of clay pit and processing plant before making inspection since warrantless nonconsensual inspections of such facilities are constitutionally permissible.

77: 103(a)
INSPECTIONS - Operator's Consent - Clay Pit - Constitutionality, 22.05 5.106

903
SUN LANDSCAPING & SUPPLY COMPANY
WEST 79-278-M
April 29, 1980
ALJ - Final
4/80 p975*

(Reference Docket Number WEST 79-334-M)

Setting up mining facilities with intent to mine marble, crush it, and sell it in the future for landscaping supplies affects commerce and thus places operator under jurisdiction of Federal Mine Safety and Health Act of 1977.

COVERAGE OF ACT - Commerce - Setting Up Facilities - Intent to Sell, 5.102

742
SUNBEAM COAL CORPORATION
PITT 79-210
January 29, 1980
ALJ - Review Denied
1/80 p192*

(Reference Docket Numbers PITT 79-211, 79-212, 79-213 and 79-214)

Operator is entitled to review of §104(a) violation and inspector's additional finding of "significant and substantial" even though citations were abated, because operator is vulnerable pursuant to §104(e) to withdrawal order resulting from finding of pattern of "significant and substantial" violations.

All violations of mandatory standards under 1977 Act are "significant and substantial" except those violations which pose no risk of injury to all or those violations that pose source of injury that has only speculative chance of happening.

Citation for violation of requirement under 30 CFR §77.160(cc) that belt conveyors with walkways be equipped with emergency stop devices is vacated since area cited by inspector was where belt intersected work platform used as maintenance station, and it cannot be concluded that belt conveyor had walkway.

Operator's claim that another suitable means of grounding switch box was used and that absence of frame ground would not make likelihood of accident imminent is no defense to violation of requirement under 30 CFR §77.701 that metallic frames enclosing electrical equipment be grounded since lack of frame ground could contribute to possible accident.

Lack of proper frame ground on switch box, coupled with facts that there was no insulating mat on floor, floor was muddy and wet, outer insulation of cable was "frayed", and switch box was near entrance of shop, constituted significant and substantial violation of 30 CFR §77.701

Failure to provide insulating mat at switch box, coupled with facts that floor was muddy and wet, switch box did not have frame ground, and cable was frayed, constituted significant and substantial violation of 30 CFR §77.513.

Failure to provide protective barrier around elevated working platform did not constitute violation of 30 CFR §77.205(a) since standard requires safe access to working areas and MSHA did not establish that access to platform was unsafe.

Failure to provide protective barrier around elevated working platform did not constitute violation of 30 CFR §77.205(e) since standard requires handrails on stairways and MSHA did not establish that stairway to platform area was unsafe.

Failure to install guard on head pulley constituted violation of 30 CFR §77.400(c), but violation was not significant and substantial since chain guards were installed at gear box head pulley drive, gear sprocket was guarded, and probability of someone falling into pinch point was remote.

77: 104(a) 77: 104(e)
CITATIONS - Significant and Substantial - Review Proceeding - Abated Citations, 24.30 28.50
77: 104(a)
CITATIONS - Significant and Substantial - No Risk of Injury - Remote Chance of Injury, 24.20 24.30
30 CFR 77.1607(cc)
HAULAGE - Belt Conveyor - Walkways - Emergency Stop Devices, 77.1607
30 CFR 77.701
ELECTRICAL HAZARDS - Grounding - Switch Box - Likelihood of Accident, 77.0701 37.01
30 CFR 77.701
ELECTRICAL HAZARDS - Grounding Switch - Significant and Substantial, 77.0701 24.30
30 CFR 77.513
ELECTRICAL HAZARDS - Insulating Mat - Switch Box - Significant and Substantial, 77.0513 24.30
30 CFR 77.205(a)
TRAVELWAYS - Elevated Working Platform - Protective Barrier - Safe Access, 77.0205
30 CFR 77.205(e)
TRAVELWAYS - Elevated Working Platform - Stairway - Handrails, 77.0205
30 CFR 77.400(c)
GUARDS - Head Pulley - Chain Guards - Remote Possibility of Injury - Significant and Substantial, 77.0400 24.30

748
SUNBEAM COAL CORPORATION
PITT 79-210
March 10, 1980
RC - Dismissing Review
4/80 p775*

(Reference Docket Numbers PITT 79-211 through 79-214)

Operator's petition for discretionary review filed 34 days after judge's decision is dismissed as untimely filed since §113(d)(2)(A)(i) of 1977 Act requires that petition be received by Review Commission within 30 days after issuance of judge's decision; additional five-day period for filing responses by mail in 29 CFR §2700.8(b) does not apply to statutory period here.

77: 113(d)(2)(A)(i) 29 CFR 2700.8(b)
REVIEW COMM PROCEDURE- Petition for Discretionary Review- Timeliness- 30-day Requirement- Five-day Extension, 35.24
29 CFR 2700.5(d)

241
SUNSHINE COLLERIES, INC
NORT 78-56-P
June 23, 1978
ALJ - Final
Unbound

77: 110(i)
69: 109(a)(1)
30 CFR 75.316
30 CFR 75.603

415
SUNSHINE MINING COMPANY
DENV 78-568-PM(A)
March 27, 1979
ALJ - Review Denied
3/79 p169

30 CFR 57.3-22

414
SUNSHINE MINING COMPANY
DENV 78-569-PM(A)
March 27, 1979
ALJ - Review Denied
3/79 p167

30 CFR 57.3-22

151
SUNSHINE MINING COMPANY
DENV 79-99-PM
October 3, 1979
ALJ - Final
10/79 p1535*

Loose materials and ground water falling around electrical components of switch rack, creating hazard of shortage and fire, constitute violation of 30 CFR §57.12-30, even though dangerous condition did not predate energizing of equipment wires.

Requirement under 30 CFR §57.19-100 that shaft landings be equipped with safety gates to prevent materials from going into shaft does not extend to skip or loading pockets.

Inspector incorrectly relied on possibility of miner falling into shaft in citing violation of 30 CFR §57.19-100, since that standard, which requires that safety gates be installed on shaft landings to preclude materials from falling into shaft, does not address itself to protection of men falling into shaft.

30 CFR 57.12-30
ELECTRICAL HAZARDS - Switch Rack - Loose Materials and Ground Water - Possible Shortage and Fire, 57.12
30 CFR 57.19-100
MAN HOISTING - Shaft Landing - Prevention of Materials Spillage - Skip or Loading Pockets - Scope of Standard, 57.19
30 CFR 57.19-100
MAN HOISTING - Shaft Landing - Prevention of Materials Spillage - Protection of Men Falling into Shaft, 57.19

920
SUPERIOR SAND & GRAVEL, INC.
LAKE 79-231-M
June 3, 1980
ALJ - Final
6/80 p1308*

(Reference Docket Numbers LAKE 79-232-M, and 79-297-M)

Operator's failure to abate violation of 30 CFR §56.5-1(a) within prescribed time when it was discovered that employee was exposed to levels of respirable dust in excess of those prescribed in standard justifies issuance of withdrawal order, and operator's subsequent failure to comply with withdrawal order constitutes very serious violation of Federal Mine Safety and Health Act of 1977.

Company vice president, acting as agent of company, is liable under §110(c) of Federal Mine Safety and Health Act of 1977 for knowingly refusing to comply with §104(b) withdrawal order.

30 CFR 56.5-1(a)
WITHDRAWAL ORDER - Failure to Abate Violation - Failure to Comply with Order - Serious Violation, 24.10 56.05
77: 110(c)
AGENTS OF OPERATORS - Company Officer - Liability for Refusal to Comply with Order, 20.80 24.01

196
SUPERIOR SAND & GRAVEL, INC.
VINC 79-107-PM
December 20, 1979
ALJ - Final
12/79 p2105*

(Reference Docket Number 79-191-PM)

Citation charging violation of requirement under 30 CFR §56.14-6 that machine guards be securely in place is vacated since, although screen guarding driver coupling was not bolted to floor, it was almost impossible that screen, weighing 30 pounds, could be moved so that worker could fall into coupling.

30 CFR 56..4-6
MECHANICAL EQUIPMENT - Guards - Driver Coupling - Bolting of Screen to Floor, 56.14

891
SUPERIOR SAND & GRAVEL, INC.
VINC 79-107-PM
May 27, 1980
DISTRICT COURT (M80-2CA2)
N/A*

Sand and gravel mine operator is enjoined from excluding federal mine inspector, who it alleges has no experience in sand and gravel mines, from inspecting its operation because inspector is "authorized" by Secretary to inspect mine and exclusion of inspectors would unduly interfere with enforcement of Act.

30 CFR 56.14-6
INSPECTIONS - Exclusion of Federal Inspector - Experience in Sand and Gravel Mining, 22.01

112
SWOPE COAL COMPANY
HOPE 78-644-P
August 27, 1979
ALJ - Appealed
8/79 p1067*

(Reference Docket Numbers 78-645-P through 78-646-P and 78-664-P and 4th Cir. Number 79-1691)

Lessor of mine is "operator" of mine under Federal Mine Safety and Health Act of 1977 and liable for violations of Act when lessor continues to exercise control over mine, helps the lessee with marketing of coal, provides lessee with mining equipment, and is named as operator in legal identity report filed with Secretary.

77: 3(d)
COVERAGE - Operators - Lessor of Mine - Retention of Control - Legal Identity Report, 5.104

898
SWOPE COAL COMPANY
HOPE 78-644-P
July 3, 1980
4th Cir Court (79-1691)
N/A*

Order of Federal Mine Safety and Health Review Commission holding that lessor-coal company was "operator" of coal mine within meaning of 1977 Act is supported by substantial evidence.

77: 3(d)
JUDICIAL REVIEW - FMSHRC Order - "Operator" of Coal Mine - Substantial Evidence, 205.10 37.20

250

1250
TACEY TRANSPORT CORPORATION
YORK 80-68-M
November 14, 1980
ALJ - Final
11/80 p3293

PA

1252
TAZCO, INC.
VA 80-121
November 17, 1980
ALJ - Review Granted
11/80 p3299

PS

1186
TEXAS ARCHITECTURAL AGGREGATES, INC.
CENT 79-16-M
October 28, 1980
ALJ - Final
10/80 p3124

30 CFR 57.9-60
30 CFR 57.11-1
30 CFR 57.12-25
30 CFR 57.18-10
30 CFR 57.18-28(d)
30 CFR 57.9-22

612
TEXAS INDUSTRIES, INC.
DENV 79-160-PM
September 19, 1979
ALJ - Final
9/79 p1361

PS

1050
TEXAS UTILITIES GENERATING COMPANY
CENT 79-93-D
August 12, 1980
ALJ - Final
8/80 p2222*

Employee's contention that he was fired after having a finger amputated as result of job-related injury, that he was not given desk job, and that other employees who suffered injury and illness were given easier, better paying jobs by employer does not constitute allegation of discrimination against employee in violation of Section 110(b) of 1969 Act.

Employee's failure to file complaint alleging discrimination until more than two years after alleged violation of Section 110(b) of 1969 Act and his failure to allege violation warrents dismissal of complaint despite refusal of nine lawyers to represent employee, because he knew all facts regarding discharge, could travel and use telephone, talked to lawyers, and was able to pursue other legal matters, and nature of his injuries, illnesses, and prescribed medication did not prevent timely filing of his complaint.

69: 110(b)
DISCRIMINATION - What Constitutes Discrimination, 30.08
69: 110(b)
DISCRIMINATION - Complaint to Secretary - Timeliness, 30.03

55
TEXAS UTILITIES GENERATING COMPANY
DENV 78-51-P
April 5, 1979
ALJ - Final
4/79 p185*

(Reference Docket Numbers 78-485-P, 78-486-P, 78-487-P, 78-491-P, 78-492-P and 78-503-P)

Definitions of "operator" and "coal mine" in §§3(e) and (h), Federal Coal Mine Health and Safety Act of 1969, are broad enough to encompass operator of strip mine that has not yet produced coal and strip mine itself.

Given absence of clean-up program and fire hazard presented, presence of excessive oil spillage and oil soaked rags on and around swing gear case and hydraulic control valves on backhoe, beside operator's cab and in area of hydraulic tanks, constitutes violation of 30 CFR §77.1104.

Presence of nonoperational backup alarm on four-wheel-drive buggy constitutes violation of 30 CFR §77.410, since vehicle operator would be unable to see individual immediately behind vehicle if that individual were crouching, kneeling, or on ground.

Violations of 30 CFR §77.1004(b) are established by presence of visible cracks at top of highwall a few feet from edge, seam of sand with water running through it which undercut highwall top, and failure to post area of unstable highwall or correct unsafe condition, which may have developed prior to beginning of shift, until immediately prior to issuance of order and by failure to post area where upper portion of highwall had been undercut by groundwater and wall section broke and fell.

Despite being in pit, 300-foot section of coal haulage roadway at bottom of pit ramp is "roadway" within meaning of 30 CFR §77.1605(k).

Failure to secure cable with proper fittings in violation of 30 CFR §77.505 is established by placement of wooden fittings around cable, which were not bolted or clamped to cable, at both points where cable entered circuit breaker frame.

69: 3(e) 69: 3(h)
COVERAGE - Operators - Mines - New Strip Mine, 5.104 5.106
30 CFR 77.1104
COMBUSTIBLE MATERIALS - Oil and Rags - Surface Coal Mines, 77.1104
30 CFR 77.410
MECHANICAL EQUIPMENT - Automatic Warning Devices - Surface Coal Mines, 77.0410
30 CFR 77.104(b)
GROUND CONTROL - Inspection and Maintenance - Surface Coal Mines, 77.1004
30 CFR 77.1605(k)
HAULAGE - Installations - Coverage - Roadways - Surface Coal Mines, 77.1605
30 CFR 77.505
ELECTRICAL EQUIPMENT - Cable Fittings - Suitability - Surface Coal Mines, 77.0505

242
TEXAS UTILITIES GENERATING COMPANY
DENV 78-52-P
June 26, 1978
ALJ - Final
Unbound

30 CFR 77.400(a)
69: 104(b)
30 CFR 77.400(d)
30 CFR 77.1607(p)

559
TEXAS UTILITIES GENERATING COMPANY
DENV 78-537-P
June 29, 1979
ALJ - Final
6/79 p706

30 CFR 77.410
30 CFR 50.10
30 CFR 50.12

1069
TEXAS UTILITIES GENERATING COMPANY
DENV 79-181-P
August 27, 1980
ALJ - Final
8/80 p2413*

Citation for violation of 30 CFR 77.400(c), which requires that guards at conveyor drive pulley extend sufficent distance to prevent person from reaching behind guard and becoming caught in pinch point, must be vacated when cited unguarded area was located in position which would require person to intentionally attempt to reach pinch point in order to do so.

Operator violates provisions of 30 CFR 77.1607(n) when boom truck is left unattended on downhill slope and wheels of truck are not turned into bank or berm, even though brakes on truck are set.

Temporary splice in cable, which was used to provide power for both drill press and portable heater, which was made only with friction tape and plastic screw nuts, and which had some insulated lead wires exposed due to gap in outer jacket, constitutes violation of 30 CFR 77.504 which requires that splices in electric conductors be mechanically and electrically efficient, because company could not demonstrate that splice was efficient under varying conditions to which it would be exposed.

Operator violates provision of Section 103(f) of Federal Mine Safety and Health Act of 1977 when its agent refuses union steward opportunity to accompany inspector during physical inspection of mine, although steward had not met filing requirements of Act to qualify as miners' representative, because failure to meet filing requirements should not be permitted to serve as basis for denial of Section 103(f) representative status.

30 CFR 77.400(c)
MECHANICAL EQUIPMENT - Conveyor Drive Pulley - Guarding - Location of Pinch Point, 77.0400
30 CFR 77.1607(n)
HAULAGE - Mobile Equipment - Unattended Vehicles - Wheels Turned into Bank, 77.1607
30 CFR 77.504
ELECTRICAL HAZARDS - Electrical Connections or Splices - Suitability, 77.0504
77: 103(f)
INSPECTIONS - Walkaround Rights - Miners' Representative - Filing Requirements, 22.20

607
THACKER COAL COMPANY
PIKE 78-348-P
September 18, 1979
ALJ - Final
9/79 p1350

29 CFR 2700.26(c) (I)

462
THE ANACONDA COMPANY
DENV 78-544-M
September 29, 1978
ALJ - Final
Unbound

77: 105(d)

856
THE ANACONDA COMPANY
WEST 79-128-M
June 13, 1980
ALJ - Review Granted
6/80 p1414

30 CFR 55.16-9

1023
THE ANACONDA COMPANY
WEST 79-128-M
July 8, 1980
ALJ - Errata
7/80 p1785

861
THE ANACONDA COMPANY
WEST 79-130-M
June 13, 1980
ALJ - Review Granted
6/80 p1435

30 CFR 55.16-9

857
THE ANACONDA COMPANY
WEST 79-136-M
June 13, 1980
ALJ - Final
6/80 p1418*

(Reference MSHA Number 24-00689-05011)

Citation for violation of 30 CFR §55.15-4, which requires workers to wear safety glasses when in area of mine where there is hazard which could cause injury to unprotected eyes, must be vacated when only evidence MSHA has of violation is that metal filings can be thrown "several" feet by operating machine, and workers who are 22 feet away from machine are not wearing safety glasses.

Only nominal penalty will be assessed against employer for violation of 30 CFR §55.15-4 when employee is observed working without safety glasses and company policy requires safety glasses be worn at all times, as employee's misconduct was unforeseeable and unpreventable.

30 CFR 55.15-4
PERSONAL PROTECTION - Safety Glasses - Required Where Exposed to Hazard - Evidence, 55.15
30 CFR 55.15-4
PERSONAL PROTECTION - Safety Glasses - Unforseeable Employee Misconduct, 55.15

858
THE ANACONDA COMPANY
WEST 79-137-M
June 13, 1980
ALJ - Review Granted
6/80 p1423

30 CFR 55.16-9

860
THE ANACONDA COMPANY
WEST 79-316-M
June 13, 1980
ALJ - Final
6/80 p1434*

(Reference MSHA Number 24-00338-05005)

Citation for violation of 30 CFR §55.15-4, which requires workers to wear safety glasses when in area of mine where there is hazard which could cause injury to unprotected eyes, must be vacated when only evidence MSHA has of violation is that metal filings can be thrown "several" feet by operating machine, and workers who are 22 feet away from machine are not wearing safety glasses.

Nominal penalty of $1 will be assessed against employer for violation of 30 CFR §55.15-4 when employee is observed working without safety glasses and company policy requires safety glasses be worn at all times, as employee's misconduct was unforeseeable and unpreventable.

30 CFR 55.15-4
PERSONAL PROTECTION - Safety Glasses - Required Where Exposed to Hazard - Evidence, 55.15
PERSONAL PROTECTION - Safety Glasses - Unforeseeable Employee Misconduct, 55.15 26.30

864
THE HANNA MINING COMPANY
LAKE 79-101-M
June 17, 1980
ALJ - Review Granted
6/80 p1446*

Operator violates 30 CFR §55.11-1, which requires that safe means of access be provided and maintained to all working places, when stairs to drill are distorted and loose and stairway did not completely retract because of distortion, which kept bottom stair 24-28 inches from ground.

Guards on head pulley of pellet loadout belt which are not secured in mounting brackets and guards on drive assembly which are not secured because of missing and loose bolts violate provisions of 30 CFR §55.14-6, which requires that guards be secured while machines are operating.

Operator violates 30 CFR §55.14-1, which requires guarding of exposed moving parts, when couplings on five-and-one-half-foot drive shafts have exposed studs or screws, and shafts are adjacent to regularly used walkway.

Taking handrail off travelway and using it as handrail for working platform when platform is in use does not comply with provisions of 30 CFR §55.11-27 which require that working platforms be provided with handrail.

Accumulation of ice on botton of stairway in mine violates 30 CFR §55.11-16, which requires that walkways be cleared of snow and ice as soon as practicable, when it can be inferred that accumulation existed for some time because it was caused by drip from pipe and was discovered more than three hours after shift had begun.

30 CFR 55.11-1
TRAVELWAYS - Safe Means of Access - Distorted and Loose Stairs, 55.11
30 CFR 55.14-6
MECHANICAL EQUIPMENT - Guarding of Machinery, 55.14
30 CFR 55.14-1
MECHANICAL EQUIPMENT - Guarding of Machinery - Exposed Moving Parts, 55.14
30 CFR 55.11-27
TRAVELWAYS - Scaffolds and Work Platforms - Handrails Required, 55.11
30 CFR 55.11-16
TRAVELWAYS - Walkways - Clearance of Snow and Ice, 55.11
30 CFR 55.9-2
30 CFR 55.9-11

513
THE HELEN MINING COMPANY
PITT 79-11-P
April 11, 1979
ALJ - Review Granted
4/79 p219

77: 103(f)

118
THE HELEN MINING COMPANY
PITT 79-11-P
November 21, 1979
RC - Appealed
11/79 p1796*

(Reference D.C. Cir. Number 79-2518 and 79-2537 - consolidated with 79-2503)

Review Commission will accord special weight to Secretary's views of 1977 Act and to standards and regulations he adopts under them, and will treat his views with extra attention and respect, but will decide, independent of those views, legal and policy questions under Act.

Mine operator is not required to pay miners' representative for time he spends accompanying mine inspector during "spot" inspection required by §103(i) of 1977 Act, since legislative history of Act indicates that that was intention of Congress.

Statement of Congressman, who was chief conferee of conference committee, explaining intended effect of 1977 Act, is dispositive of question before Review Commission since statement was clear, detailed, prepared with care, and is only passage in legislative history that speaks specifically to question.

REVIEW COMMISSION JURISDICTION - Secretary's Views - Special Weight - Independence of Commission, 35.02
77: 103(i)
INSPECTIONS - Miners' Representative - Walk-around Pay - "Spot" Inspection - Legislative History, 22.20
LEGISLATIVE HISTORY - Statement of Chief Conferee - Disposition of Question, 5.08

750
THE HELEN MINING COMPANY
PITT 79-11-P
March 21, 1980
RC - Deny Motion to Stay
Not Printed*

Mine Workers' motion for order staying effect of Review Commission's decisions limiting rights to walkaround pay for miner participants in mine inspections pending appeal is denied, since union failed to show irreparability of injury to miners and to grant stay would be in derogation of Commission's statutory function of making uniform national policy.

77: 103(f) 77: 110(k)
REVIEW COMM PROCEDURE- Stay of Review Commission's Decision- Walkaround Pay- Irreparable Injury to Miners, 35.45 22.20

828
THE HELEN MINING COMPANY
PITT 79-11-P
March 21, 1980
RC - Denying Motion
4/80 p778

933
THE HOKE COMPANY, INC.
BARB 79-327-P
May 29, 1980
ALJ - Final
3/80 p1156*

(Reference Docket Number PIKE 79-113-P)

Ladder which is rusted, made of light materials, and has extensive area at top which makes it difficult and dangerous to use constitutes violation of 30 CFR §77.206(a) which requires that ladders be of substantial construction and maintained in good condition.

Elevated walkway which has handrails made of rope and three-foot gap in handrailing violates 30 CFR §77.205(e), which requires that elevated walkways be of substantial construction, be provided with handrails, and be maintained in good condition, because even though walkway is not used regularly, operator knew that there had been open section left where another walkway might have been tied into cited walkway at future date.

30 CFR 77.206(a)
LADDERS - Construction and Maintenance, 77.0206
30 CFR 77.205(e)
TRAVELWAYS - Elevated Walkways - Handrails Required, 77.0205

704
THE HOKE COMPANY, INC.
KENT 79-138
February 14, 1980
ALJ - Final
2/80 p451

30 CFR 77.410
30 CFR 77.404(a)
30 CFR 77.1302(b)
30 CFR 77.1605(d)

984
THE NEW RIVER COMPANY
WEVA 80-308
September 9, 1980
ALJ - Final
9/80 p2560

PS

698
THE NORTH AMERICAN COAL CORPORATION
LAKE 79-118
February 12, 1980
ALJ - Review Denied
2/80 p405

77: 202(e)
30 CFR 75.2(k)

1126
THE NORTH AMERICAN COAL CORPORATION
LAKE 79-118
July 21, 1980
RC
7/80 p1694*

(Reference Docket Numbers LAKE 79-214, 79-263, 80-64, 79-262, 80-61, 79-266, 80-65, VINC 79-124-P, LAKE 79-228, 79-265, 80-31, 80-32, 79-229, 80-95, 80-96, and 79-230)

Secretary's petition for discretionary review filed 51 days after issuance of judge's decision is dismissed as untimely filed and Secretary's argument, that his filing of motion to correct tolled running of 30-day period for filing petition, is rejected.

29 CFR 2700.65(c)
REVIEW COMMISSION PROEDURE - Petition for Review - Untimely Filed - Effect of Motion to Correct on Filing Period, 35.24

335
THE NORTH AMERICAN COAL CORPORATION
VINC 78-312-P
January 11, 1979
ALJ - Final
Unbound

30 CFR 75.200
30 CFR 75.402
30 CFR 75.400
30 CFR 75.202
30 CFR 75.302-1(a)
30 CFR 75.304
30 CFR 75.321
30 CFR 75.316
30 CFR 75.512

429
THE NORTH AMERICAN COAL CORPORATION
VINC 78-377
October 20, 1978
ALJ - Final
Unbound

77: 104(d)(1)
29 CFR 2700.48 (I)
29 CFR 2700.10(d) (I)

165
THE NORTH AMERICAN COAL CORPORATION
VINC 79-164-P
November 16, 1979
ALJ - Final
11/79 p1895*

(Reference Docket Number 79-165-P)

Citations for violations of 30 CFR §75.514 are vacated, since standard, which requires that all electrical connections be electrically efficient, does not apply to track haulage bonds and fish plates, as alleged in citations.

"Electrical connection" referred to in 30 CFR §75.514 means entire configuration at joint including rails, bonds, fish plates, return cable and electrical cable, and electrical efficiency required by standard cannot be determined by looking at single elements of joint, such as one bond or one fish plate.

30 CFR 75.514
ELECTRICAL HAZARDS - Electrical Connections - Track Haulage Bonds - Fish Plates, 75.0514
30 CFR 75.514
ELECTRICAL HAZARDS - Electrical Connections - Electrical Efficiency - Entire Electrical Configuration, 75.0514

772
THE PITTSBURG & MIDWAY COAL MINING COMPANY
BARB 74-666
April 21, 1980
RC
4/80 p787*

(Reference Old Docket Number IBMA No. 76-57)

Federal Mine Safety and Health Review Commission will examine anew question of what conditions or practices constitute imminent danger in cases that arise under Federal Mine Safety and Health Act of 1977.

Administrative law judge acted correctly in modifying withdrawal order by deleting references to violations that were found not to constitute imminent danger because §105(b) of Federal Coal Mine Health and Safety Act of 1969 specifically permitted modification of imminent danger withdrawal orders after hearing.

Trailing cable of bolting machine that was "mashed" under wheels of cutting machine and was lying in two to six inches of loose coal presented electrocution hazard and constituted imminent danger to miners pursuant to §104(a) of Federal Coal Mine Health and Safety Act of 1969.

Bare wire spliced in trailing cable to loading machine that was lying in accumulations of wet coal and coal dust up to six inches in depth presented source of fire or electrocution and warranted finding of imminent danger pursuant to Federal Coal Mine Health and Safety Act of 1969.

Accumulations of loose coal and coal dust did not constitute imminent danger to miners because area had been watered down and rock dusted and there were no gassy emissions in area, reducing possibility of fire or explosion.

Imminent danger withdrawal order issued when inspector concluded that overhanging ribs were loose was vacated because inspector examined for five minutes only seven or eight of 50 ribs in area and never hit ribs with crowbar or other instrument to test looseness.

77: 107(a)
IMMINENT DANGER - Review by Commission - What Constitutes - New Examination, 24.50 35.24
69: 105(b)
IMMINENT DANGER - Modification of Withdrawal Order - Section 105(b) of 1969 Act, 24.50 35.22
69: 104(a)
IMMINENT DANGER - Trailing Cable - Wet Area - Loose Coal - Electrocution Hazard, 24.50
69: 3(j)
IMMINENT DANGER - Splices in Trailing Cable - Bare Wires -

Wet Coal Dust - Electrocution Hazard, 24.50
69: 3(j)
IMMINENT DANGER - Coal Accumulation - Watered Down Area - No Gassy Emmissions - Reduced Possibility of Explosion, 24.50
69: 3(j)
IMMINENT DANGER - Overhanging Ribs - Failure to Inspect All Ribs - Test for Looseness, 24.50

691
THE PITTSBURG & MIDWAY COAL MINING COMPANY
BARB 79-307-P
February 8, 1980
ALJ - Final
2/80 p311

30 CFR 45

1125
THE PITTSBURG & MIDWAY COAL MINING COMPANY
BARB 79-307-P
August 4, 1980
RC - Remanding
8/80 p2042*

(Reference Docket Numbers BARB 79-285-P, PIKE 79-129-P, KENT 79-74, 79-180, 79-367, 79-269, 79-99, and 79-229)

In light of Secretary's new policy as to liability of owner-operators and independent contractors, case is remanded to judge to afford Secretary opportunity to decide whether to continue to enforce citations against owner or to proceed against independent contractors claimed to have violated standards cited.

INDEPENDENT COTRACTORS - Liability of Owner-Operator - Secretary's New Policy - Remand to Judge, 20.60 37.20

978
THE PITTSBURG & MIDWAY COAL MINING COMPANY
BARB 79-307-P
September 4, 1980
Secretary's Statement
9/80 p2530

977
THE PITTSBURG & MIDWAY COAL MINING COMPANY
BARB 79-307-P
September 5, 1980
ALJ - Dismiss On Remand
9/80 p2528

638
THE PITTSBURG & MIDWAY COAL MINING COMPANY
DENV 79-327-P
October 17, 1979
ALJ - Final
10/79 p1632

PA

1178
THE PITTSBURG & MIDWAY COAL MINING COMPANY
WEST 79-127
October 21, 1980
ALJ - Final
10/80 p3049

30 CFR 77.1104

1257
THE STANDARD SLAG COMPANY
LAKE 79-217-M
November 19, 1980
ALJ - Final
11/80 p3312*

Operator did not violate mandatory safety requirement of 30 CFR 56.14-1 that exposed moving machine parts be guarded, because "testing" exception allows machinery to be unguarded during initial setup.

Operator does not violate requirement of 30 CFR 56.11-1 that safe means of access be provided and maintained in working places when cited walkway was irregularly used catwalk, not needed as means of access and not used as workplace.

30 CFR 56.14-1
MECHANICAL EQUIPMENT - Guards - Moving Machine Parts - Exception, 56.14
30 CFR 56.11-1
TRAVELWAYS - Safe Means of Access - Catwalk Irregularly Used, 56.11

453
THE STANDARD SLAG COMPANY
VINC 78-364-M
July 24, 1978
ALJ - Final
Unbound

77: 105(d)

268
THE STANDARD SLAG COMPANY
VINC 78-431-M
August 31, 1978
ALJ - Final
Unbound

77: 105(d)
29 CFR 2700.18(a) (I)

1322
THE TEXOLINE MINING COMPANY
79-2373
February 28, 1980
US Appeals - 5th Cir
N/A*

Warrantless inspections of gravel pits pursuant to 1969 Act are constitutional since inspection provisions in Act are more narrowly drawn than comparable OSHA provision. Act protects privacy by providing for immediate judicial review when entry is refused, and Congress was reasonable in concluding that safety concerns in mines justify warrantless inspections.

69: 103(a)
INSPECTIONS - Warrants - Gravel Pits - Constitutionality - Reasonableness, 22.05 5.05
69: 102(b)

238
THE VALLEY CAMP COAL COMPANY
MORG 78-24-P
June 22, 1978
ALJ - Final
Unbound

30 CFR 75.1725(a)

48
THE VALLEY CAMP COAL COMPANY
MORG 78-46-P
July 9, 1979
RC - Reverse & Remand
7/79 p791*

Judge's default order following operator's late filing of answer to petition for assessment of civil penalty is reversed in light of counsel's excusable error and lack of prejudice to Secretary.

REVIEW COMMISSION PROCEDURE - Judge's Default Order - Failure to File Timely Answer - Excusable Error of Counsel, 35.113

583
THE VALLEY CAMP COAL COMPANY
MORG 78-46-P
August 9, 1979
ALJ - Review Granted/Vacated
8/79 p1011

PS

584
THE VALLEY CAMP COAL COMPANY
MORG 78-46-P
August 9, 1979
ALJ - Memorandum Opinion
8/79 P1012

PS

946
THE VALLEY CAMP COAL COMPANY
MORG 78-46-P
August 9, 1979
ALJ - Memorandum Opinion
8/79 p1012

77: 110(k)

627
THE VALLEY CAMP COAL COMPANY
MORG 79-77-P
October 4, 1979
ALJ - Final
10/79 p1558

30 CFR 70.100(b)
30 CFR 75.201

733
THE VALLEY CAMP COAL COMPANY
WEVA 79-111
March 28, 1980
ALJ - Review Denied
3/80 p756*

(Reference Docket Number HOPE 79-318-P)

Tunnel which contains conveyor belt that moves coal extracted from adjacent mine and which has immediate overburden that consists of 12 inches of coal is underground coal mine covered by Part 75 of 30 CFR rather than Part 77.

30 CFR 75.1
STANDARDS - Underground Coal Mines - Scope - Tunnel - Adjacent Mine, 75.0001

809
THE VALLEY CAMP COAL COMPANY
WEVA 79-116-D
April 18, 1980
ALJ - Review Granted
4/80 p928

77: 105(c)(1)

1083
THE VALLEY CAMP COAL COMPANY
WEVA 79-116-D
May 28, 1980
RC - Remanding
Not Printed

77: 105(c)(1)

1116
THE VALLEY CAMP COAL COMPANY
WEVA 79-116-D
July 11, 1980
ALJ - Final on Remand
4/80 p928*

Complaint of discriminatory discharge in violation of §105(c)(3) of the Federal Mine Safety and Health Act of 1977 must be dismissed when evidence shows that, although discharged miner had made safety complaints which had been recognized by operator, miner was discharged as part of general reduction of work force and miner was not qualified, according to operator's standards, to perform other work in mine.

Motion for new hearing on grounds of newly discovered evidence, as provided for by Rule 60(b)(2) of Federal Rules of Civil Procedure, must be denied when new evidence is not of nature that would probably produce new result after new hearing.

77: 105(c)(3)
DISCRIMINATION-Safety Complaints Grounds for Discharge-Reduction in Work Force-Miner's Qualif's for New Position, 30.053
COMMISSION PROCEDURE - Motion for New Hearing - New Evidence, 35.30

1324
THOMAS CONWAY
79-4511
May 28, 1980
DISTRICT COURT
N/A*

Due process rights of mine owners are not offended by policy of Federal Mine Safety and Health Act of 1977 which does not allow owner hearing prior to issuance of ciations and orders for violations of Act, because Act provides for elaborate review procedures which afford mine owners full opportunity to be heard.

CONSTITUTIONALITY - Due Process - Issuance of Citations and Orders Prior to Hearing, 5.05 24.01

1005
THOMAS DUPREE
KENT 80-216-D
September 26, 1980
ALJ - Erratum
9/80 p2687*

Mine Safety and Health Administration can be charged with discriminating against miners who have engaged in safety-related activities, in violation of section 105(c) of Federal Mine Safety and Health Act of 1977, because legislative history of Act establishes that MSHA can be considered "person" subject to liability under section 105(c) because section was intended to protect miners against discrimination from any source.

Secretary's motion for summary judgement, alleging that it's agent's conduct cannot be imputed to Secretary because agent was not acting in official capacity when he conducted alleged illegal activities, must be denied when issues of fact concerning scope of agent's authority are in dispute, because Commission rules require that motion for summary judgement be granted only if entire record shows that there is no genuine issue as to any material fact.

77: 105(c)
DISCRIMINATION - Complaint against MSHA - MSHA as Person Under Section 105(c) Legislative History, 30.01
77: 105(c)
COMMISSION PROCEDURE-Motion summary judgement-Dispute as to Material Fact-Imputing Conduct of Agent to Superior, 35.20

876
THOR MINING COMPANY
BARB 79-311-PM
June 24, 1980
ALJ - Final
6/80 p1592*

Operator violates 30 CFR §55.14-1, which requires guarding of exposed moving parts which may be contacted by persons, when head pulley and tail pulley on conveyor belts are inadequately guarded and there are exposed pinch points in each area which could cause physical harm if contacted by persons.

Handrails are required around outer edge of storage tank atop which workers must go periodically, because function of tank brings it within definition of elevated walkway and 30 CFR §55.11-2 requires handrails be provided on elevated walkways.

Citation for violation of 30 CFR §55.12-8, which requires installation of bushings to provide adequate insulation of power wires, must be vacated when allegations in citation are confined to absence of junction box, and there is no indication that operator was informed that absence of required bushings was basis for citation.

Opening at pump sump which is not protected by railings, barriers, or covers violates 30 CFR §55.11-12, which requires that openings near travelways through which men may fall be protected by railings, when evidence establishes that, by failing to designate safe area for travel near pump sump, company tacitly designated entire area as travelway and travelway was used regularly to conduct inspections and repair activities.

30 CFR 55.14-1
MECHANICAL EQUIPMENT - Use of Equipment - Guarding Exposed Moving Parts, 55.14
30 CFR 55.11-2
TRAVELWAYS - Handrails - Required on Elevated Walkways - Applicability to Storage Tank, 55.11
30 CFR 55.12-8
ELECTRICAL HAZARDS - Adequate Insulation of Power Wires - Bushings Required - Inadequate Notice, 55.12 37.05
30 CFR 55.11-12
TRAVELWAYS - Openings Near Travelways - Protection Required, 55.11

1041
TOWN OF CANANDAIGUA
YORK 80-37-M
August 7, 1980
ALJ - Final
8/80 p2154*

Town-operator's failure to budget money for paying penalties assessed by Mine Safety and Health Administration is not valid reason for MSHA not to impose penalties for safety violations because, if operator's argument were accepted, every operator subject to MSHA jurisdiction would see to it that it budgeted no funds to pay these penalties.

Operator violates 30 CFR 56.14-1, which requires guarding of exposed moving machine parts that may be contacted by persons, when sprockets on crushers are unguarded and chain running over sprockets created pinch points in which employee could get arm caught and suffer sever injuries.

MECHANICAL EQUIPMENT - Guarding Exposed Moving Machine Parts - Sprockets, 56.14
30 CFR 56.14-1
PENALTIES - Town-operators Failure to Budget for Fines, 26.40

518
TRAIL MOUNTAIN COAL COMPANY
DENV 78-460-P
April 20, 1979
ALJ - Final
4/79 p253

FS

764
TRIPLE S COAL COMPANY
PIKE 79-7-P
January 28, 1980
ALJ - Final
1/80 p100*

Testimony of MSHA's witnesses who only possessed "big list" of abandoned mines prepared by other personnel cannot be used to prove failure of operator to submit final map of abandoned mine in violation of 30 CFR §75.1204, where operator introduces credible witness who testifies that final map was timely submitted.

30 CFR 75.1204
MINE MAPS - "Big List" of Abandoned Mines - Final Map - Credible Witness, 75.1204

540
TRIPLE T COAL COMPANY, INC.
NORT 78-317-P
May 30, 1979
ALJ - Final
5/79 p429

30 CFR 80.32

743
TRIPLE S COAL COMPANY
PIKE 79-22-P
January 28, 1980
ALJ - Final
1/80 p121*

Operator violated requirement of 30 CFR §75.1711 that abandoned mines be sealed because dirt had been pushed into entries of operator's abandoned mine for distance of only five or ten feet and there was space above dirt through which persons could enter mine.

Operator violated 30 CFR §75.1711 when it failed to properly seal abandoned mine even though co-partner of operator only examined mine as agent of mine owner because co-partner notified MSHA that he would enter mine and that operator intended to produce coal.

30 CFR 75.1711
SEALING - Abandoned Mine - Dirt in Entries - Opening, 75.1711
30 CFR 75.1711
SEALING - Examination of Mine - Notification to MSHA - Agent of Owner, 75.1711 20.80

593
U S FUEL COMPANY
DENV 78-414-P
August 29, 1979
ALJ - Final
8/79 p1113

77: 110(a)
30 CFR 75.200
30 CFR 75.400

714
UNION ROCK & MATERIALS CORPORATION
DENV 78-579-PM
March 5, 1980
ALJ - Review Granted
3/80 p645*

Guard left off V-belt drive of sand reject conveyor during test to assure smooth running of complete conveyor belt system violated 30 CFR §56.14-6 requirement that guards be in place during operation of machinery because "testing machinery" exception of standard refers to curing of mechanical malfunction rather than "testing phase" of setting up plant.

Motor junction box cover left off first stage of sand reject conveyor during checking of conveyor system violated 30 CFR §56.12-32 requirement that inspection and cover plates on electrical equipment and junction boxes be kept in place at all times because exception contained in standard refers to testing of electrical connections or to splicing wires rather than to "testing phase" of setting up plant.

Nonfunctional loose power conductor improperly fitted with strain relief did not violate 30 CFR §56.12-8 requirement that cables enter motors or electrical compartments only through proper fittings because power wires and cables must be energized or subject to being energized before standard applies.

30 CFR 56.14-6
MECHANICAL EQUIPMENT - "Testing Machinery" Exception - Testing Phase of Setting Up Plant, 56.14
30 CFR 56.12-32
MECHANICAL EQUIPMENT - "Testing or Repairs" Exception - Testing Phase of Setting Up Plant, 56.12
30 CFR 56.12-8
ELECTRICITY - Wires and Cables - Conducting Capacity, 56.12

802
UNION ROCK & MATERIALS CORPORATION
DENV 78-579-PM
April 14, 1980
RC - Dismissing Review
4/80 p782

1249
UNION ROCK & MATERIALS CORPORATION
WEST 79-93-M
November 14, 1980
ALJ - Final
11/80 p3289

30 CFR 56.17-1

804
UNITED CASTLE COAL COMPANY
VA 79-99-D
April 4, 1980
ALJ - Final
4/80 p803

77: 105(c)(1)

723
UNITED CASTLE COAL COMPANY
VA 79-141-D
March 13, 1980
ALJ - Review Granted
3/80 p700

77: 105(c)(2)

763
UNITED CEMENT COMPANY
BARB 79-55-PM
January 28, 1980
ALJ - Final
1/80 p133*

Requirement under 30 CFR §56.12-34 that light bulbs be guarded, which is designed to prevent shock hazards, is not violated when evidence does not show that miners in cited area were using metal rods that could have made contact with filament in broken bulbs.

Loose paper, wire conduit, empty wire reel, and gallon glass jug on floor and walkway of electrical control room, which was used as work room and lunch room, constituted violation of 30 CFR §56.20-3

Operator's failure to install handrails around platform, which was elevated approximately 30 inches above ground, and on steps of a kiln oxygen analyzer station constituted violation of 30 CFR §56.11.

30 CFR 56.12-34
ELECTRICAL HAZARDS - Shock Hazard - Broken Light Bulbs - Metal Rods, 56.12
30 CFR 56.20-3
HOUSEKEEPING - Debris in Work Area - Lunchroom, 56.20
30 CFR 56.11
TRAVELWAYS - Failure to Install Handrails - Elevated Platform - Steps, 56.11

347
UNITED MINE WORKERS OF AMERICA, LOCAL NO 5429
MORG 79-13
January 24, 1979
ALJ - Review Granted
Unbound

29 CFR 2700.29 (I)

973
UNITED NUCLEAR-HOMESTAKE PARTNERS
CENT 79-377-M
September 3, 1980
ALJ - Final
9/80 p2489*

Provisions of 30 CFR 57.15-5 require that safety belts and lines be worn where there is danger of falling, and operator violates standard when employee failed to attach safety belt to safety line when he climbed onto conveyance, because there was possibility of his falling off conveyance and into open shaft.

Hole in shaft landing gate which is approximately one by one and a half feet is large enough for materials to fall through and therefore constitutes violation of 30 CFR 57.19-100.

Operator violates 30 CFR 57.19-106 which requires that shaft sets be maintained in good condition when inspection reveals that one shaft set was broken and 10 to 12 other sets were loose.

30 CFR 57.15-5
PERSONAL PROTECTION - Safety Belts - Danger of Falling, 57.15
30 CFR 57.19-100
MAN HOISTING - Shafts - Hole in Gate, 57.19
30 CFR 57.19-106
MAN HOISTING - Shaft Sets - Maintenance - Loose Material, 57.19

995
UNITED NUCLEAR-HOMESTAKE PARTNERS
CENT 80-45-M
September 16, 1980
ALJ - Final
9/80 p2632

PS

246
UNITED STATES STEEL CORPORATION
BARB 78-424
June 29, 1978
ALJ - Final
Unbound

77: 105(d)

332
UNITED STATES STEEL CORPORATION
BARB 79-37
January 9, 1979
ALJ - Final
Unbound

77: 104(b)
30 CFR 56.12-30

111
UNITED STATES STEEL CORPORATION
BARB 79-276
August 10, 1979
ALJ - Final
8/79 p1024*

(Reference Docket Number 79-277)

Since operator's ventilation plan imposes requirements no stricter than those contained in 30 CFR §75.302-1(a), which requires that line brattice must be maintained to within ten feet of area of deepest penetration of all working face only when coal is being cut, mined or loaded, there is no violation of 30 CFR §75.316.

30 CFR 75.302-1(a) 30 CFR 75.316
VENTILATION - Methane and Dust Control Plan - Line Brattice - Underground Coal Mines, 75.0316

378
UNITED STATES STEEL CORPORATION
HOPE 78-7-P
May 19, 1978
ALJ - Final
Unbound*

Acme roof bolting machine, which is used as carrier to transport device actually being used to roof bolt face, qualifies as self-propelled electric face equipment and is subject to requirements of 30 CFR 75.1710 that it be provided with canopy or cab.

30 CFR 75.1710
CANOPIES OR CABS - Electric Face Equipment - Self-Propelled Machine, 75.1710
69: 109(a)(1)

529
UNITED STATES STEEL CORPORATION
HOPE 79-121
May 2, 1979
ALJ - Final
5/79 p353

77: 104(b)
30 CFR 75.523

64
UNITED STATES STEEL CORPORATION
HOPE 79-123
May 2, 1979
ALJ - Final
5/79 p360*

Inspection of portal bus brakes between shifts by working lever instead of regular examinations over a pit constitutes inadequate examination under 30 CFR §75.512 and imminent danger under §107 of 1977 Act; evidence establishes reasonable expectation of malfunction while people are in portal buses, resulting in death or serious injury before abatement can be accomplished.

77: 107 30 CFR 75.512
ELECTRICAL EQUIPMENT - Examiniation of Brakes of Portal Buses - Imminent Danger - Underground Coal Mines, 75.0512 24.50

613
UNITED STATES STEEL CORPORATION
HOPE 79-152
September 19, 1979
ALJ - Final
9/79 p1371

30 CFR 75.200

65
UNITED STATES STEEL CORPORATION
HOPE 79-246
May 2, 1979
ALJ - Final
Unbound*

Failure to report retransfer of individual who was transferred to less dusty job pursuant to Section §203(b) of Federal Coal Mine Health and safety Act of 1969 due to evidence of pneumoconiosis, does not constitute violation of 30 CFR §90.040, since regulation refers only to initial transfer and does not cover subsequent transfers.

69: 203(b)
TRANSFER OF MINERS - Pneumoconiosis - Reporting of Retransfer, 20.11

530
UNITED STATES STEEL CORPORATION
HOPE 79-251
May 2, 1979
ALJ - Final
5/79 p358

30 CFR 90.40
77: 203(b)

848
UNITED STATES STEEL CORPORATION
PENN 79-31
June 10, 1980
ALJ - Final
6/80 p1376*

Mine owner violates provisions of 30 CFR §75.523, which requires that electric face equipment be provided with devices that will permit equipment to be de-energized quickly in event of emergency, when evidence shows that panic bars on owner's ram cars were not maintained properly because operator had to reach for bar from his operating position to activate device.

30 CFR 75.523
ELECTRICAL HAZARDS - Electric Face Equipment - De-Energizing Device - Location of Panic Bar, 75.0523
30 CFR 75.523-1(b)

836
UNITED STATES STEEL CORPORATION
PENN 79-97
May 14, 1980
ALJ - Final
6/80 p1225

30 CFR 75.200

929
UNITED STATES STEEL CORPORATION
PENN 79-97
May 14, 1980
ALJ - Final
6/80 p1225*

Operator violates its approved roof control plan and 30 CFR §75.200 when plan permits mining of entries to 16-foot width, with tolerances of 12 inches on width openings allowed at intermittent locations, and measurement of entries establishes that width was excessive in numerous areas, not at intermittent locations.

30 CFR 75.200
ROOF SUPPORT - Roof Control Plans - Excessive Widths, 75.0200

819
UNITED STATES STEEL CORPORATION
PENN 79-123
May 20, 1980
ALJ - Final
5/80 p1115

30 CFR 75.511

92
UNITED STATES STEEL CORPORATION
PITT 76-160-P
September 17, 1979
RC
9/79 p1306*

(Reference Old Docket Number IBMA No. 77-33) (Reference Docket Number 76-162-P)

Operator violated 30 CFR §75.1714-2(a) when miners failed to wear self-rescue devices in mine; establishment by operator of self-rescue training program does not constitute compliance with requirement of standard that self-rescue devices be "worn or carried on the person of each miner."

30 CFR 75.1714-2(a)
SELF-RESCUE - Self-Rescue Devices - Operator's Responsibility - Underground Coal Mines, 75.1714

178
UNITED STATES STEEL CORPORATION
PITT 76X232-P
January 10, 1980
RC
1/80 p1*

(Old Docket Number IBMA No. 77-23)

Secretarial Order No. 2977, which directs MESA to issue citations for violations of 1969 Act committed by construction contractors on mine property, applies to citations issued to contractors prior to May 24, 1975, effective date of Order, since any controversy must be decided based on most current law, rather than law in existence at moment of issuance of citation.

INDEPENDENT CONTRACTORS - Construction Work - Citations - Effective Date of Secretarial Order, 5.108 5.101

444
UNITED STATES STEEL CORPORATION
PITT 78-335
July 11, 1978
ALJ - Review Granted
Unbound

77: 105(d)

17
UNITED STATES STEEL CORPORATION
PITT 78-335
May 2, 1979
RC - Reverse & Remand
5/79 p332

269
UNITED STATES STEEL CORPORATION
PITT 78-380
August 31, 1978
ALJ - Final
Unbound

77: 105(d)
29 CFR 2700.18(a) (I)

309
UNITED STATES STEEL CORPORATION
PITT 78-398
November 10, 1978
ALJ - Final
Unbound

77: 105(d)
29 CFR 2700.18(a) (I)

1238
UNITED STATES STEEL CORPORATION
PITT 78-430-P
November 3, 1980
ALJ - Final
11/80 p3220

30 CFR 75.1725(c)
30 CFR 75.509

1027
UNITED STATES STEEL CORPORATION
PITT 79-186-P
July 16, 1980
ALJ - Final
7/80 p1831

PS

1039
UNITED STATES STEEL CORPORATION
PITT 79-186-P
August 6, 1980
ALJ - Errata
8/80 p2143

983
UNITED STATES STEEL CORPORATION
WEST 80-12-M
September 9, 1980
ALJ - Review Denied
9/80 p2555*

"Hazardous" means "exposed to or involving danger; perilous; risky"; accordingly, hazardous condition within meaning of 30 CFR 55.18-20 endangers safety of employee washing tripper gallery floor where openings in floor are about 10 feet long due to absence of grizzely bars and there is possibility of employee slipping and falling into opening.

To "communicate" means "to bestow, convey, make known, recount, impart; to give by way of information"; accordingly, employee washing tripper gallery floor where hazardous condition exists is unable to communicate with others as required by 30 CFR 55.18-20, despite existence of paging system and elevator alarm bell, since paging system was not operable at time of inspection and there was no evidence that elevator would always be available.

Location of up to four candy wrappers in or near about 30 wooden blocks piled in area used to dry electric motors does not constitute failure to keep workplace clean and orderly in violation of 30 CFR 55.20-3(a), particularly when there was no evidence as to how long paper might have been there.

Risk of injury from electric grinder with two grinding wheels measuring approximately 16 inches in diameter and located in dozer and loader repair area is too remote to be considered "potentially dangerous condition" within meaning of 30 CFR 55.12-30 where grinding wheels are well guarded with cast iron guard that completely surrounds each wheel, except for small opening where grinding takes place.

30 CFR 55.18-20
SAFETY PROGRAMS - Hazardous Conditions - Tripper Gallery Floor, 55.18
30 CFR 55.18-20
SAFETY PROGRAMS - Communication with Others - Tripper Gallery Floor, 55.18
30 CFR 55.20-3(a)
CONDITION OF WORKPLACE - Clean and Orderly - Candy Wrappers, 55.20
30 CFR 55.12-30
ELECTRICAL HAZARDS - Potentially Dangerous Condition - Grinder, 55.12

1173
UNITED STATES STEEL CORPORATION
WEST 80-312-R
October 17, 1980
ALJ - Final
10/80 p3022

30 CFR 75.200

867
UNITED STATES STEEL CORPORATION
WEVA 79-172-R
June 19, 1980
ALJ - Final
6/80 p1515*

Issuance of withdrawal order for failure to abate violation of 30 CFR §75.1722 (guarding exposed moving machine parts) is justified when evidence shows that violation could have abated within specified time because one portion of violation was abated 20 minutes after order was issued, and inadequate guarding had been installed at another cited location.

77: 104(b) 30 CFR 75.1722
WITHDRAWAL ORDER - Failure to Abate - Adequate Time for Abatement,, 24.10 75.1722

677
UNITED STATES STEEL CORPORATION
WEVA 79-304
January 15, 1980
ALJ Final see US Steel 9/19/79
1/80 p47

881
UNITED STATES STEEL CORPORATION
WEVA 79-343-R
June 25, 1980
ALJ - Final
6/80 p1631*

Issuance of unwarrantable failure withdrawal order is justified when operator violates its roof control plan by maintaining openings wider than allowed without installing posts, and evidence shows that company knew what plan required and there was no amendment to plan which would allow company to disregard need for posts.

Unwarrantable failure order issued for violation of 30 CFR §75.202 because loose unsupported ribs existed at three locations in mine must be vacated when evidence shows that loose ribs were not so obvious and dangerous that operator knew or should have known they existed.

30 CFR 75.200
WITHDRAWAL ORDERS - Unwarrantable Failure to Comply - Roof Control Plan, 24.20 75.0200
30 CFR 75.202
WITHDRAWAL ORDERS - Unwarrantable Failure to Comply - Loose Ribs - Obvious Condition, 24.20 75.0202
77: 104(d)(1)

997
UNITED STATES STEEL CORPORATION
WEVA 80-466
September 19, 1980
ALJ - Final
9/80 p2644

30 CFR 75.202

915
UNITED STATES STEEL CORPORATION
WEVA 80-54-R
April 8, 1980
ALJ - Final
4/80 p832*

(Reference Docket Number WEVA 80-55-R)

Accumulation of float coal dust within cited area presents serious hazard to safety and health of miners in area thus consituting significant and substantial violation of 30 CFR §75.400 even though cited area is not within "high risk area".

Withdrawal order issued pursuant to Section 104(b) of Federal Mine Safety and Health Act of 1977 is justified when in setting reasonable time for abatement of violation, inspector considers area involved, availability of materials, work involved, and available manpower required and operator is not diligent in achieving abatement within this time.

30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation of Float Coal Dust - Significant and Substantial Violation, 75.0400 24.15
77: 104(b)
WITHDRAWAL ORDERS - Reasonable Time for Abatement - Insufficient Attempt to Abate, 24.10 28.10

520
UNIVERSAL COAL & ENERGY COMPANY
DENV 78-17
April 25, 1979
ALJ - Final
4/79 p268

77: 105(c)

1124
UTAH INTERNATIONAL, INC.
WEST 79-237
April 2, 1980
ALJ - Final
4/80 p798*

Operator satisfied requirement of 30 CFR §71.108 that dust samples for its employees be collected even though data card sent to MSHA had incorrect social security number for one miner and sample was not taken for second miner whose employment had terminated without notification to MSHA.

30 CFR 71.108
RESPIRABLE DUST - Data Card - Incorrect Social Security Number - Miner's Change of Status, 71.0108

1340
VAN MULVEHILL COAL COMPANY, INC.
SE 79-127
December 12, 1979
ALJ - Review Granted
Unbound

195
VAN MULVEHILL COAL COMPANY, INC.
SE 79-127
February 25, 1980
RC - Reverse & Remand
2/80 p283*

In considering combined citation and withdrawal order under §§104(a) and 107(a) of 1977 Act, judge's dismissal of citations because withdrawal order had been vacated is reversed since allegation of violation survives vacation of order it is contained in, and, if proven, assessment of penalty is required.

Judge's dismissal of citations because coal was not being produced when citations were issued and operator was in poor financial condition and cooperated with inspector is reversed since these factors are taken into consideration when assessing appropriate penalties under §110(i) of 1977 Act.

77: 104(a) 77: 107(a)
CITATIONS - Combined Citation and Withdrawal Order - Termination of Order - Penalty Assessment, 24.08 26.01
77: 110(i)
PENALTIES - Dismissal of Citations - Operator's Financial Condition - Good Faith, 26.40 26.60

1114
VESS HALL, JR.
SE 79-119-D
May 27, 1980
ALJ - Review Denied
Unbound*

Order to show cause served on company makes it clear that response to discrimination complaint is required, so that company's agent's action of orally communicating answer does not constitute good cause for failure to file answer and is not grounds for setting aside default judgment entered against company.

Service of process upon mine superintendent is valid, according to Federal Rules of Civil Procedure, which provide that service upon agent authorized to receive process is not necessary if service is directed to "an officer, a managing or general agent" of company, because mine superintendent holds position calling for exercise of judgment and discretion on company's behalf, and he could reasonably be expected to apprise company counsel of action.

77: 105(c)
COMMISSION PROCEDURE - Response to Initial Filing - Knowledge of Need to Respond - Oral Answer, 35.111 30.01
COMMISSION PROCEDURE - Initial Filing - Service of Process on Mine Superintendant, 35.101

989
VIRGINIA POCAHONTAS COMPANY
VA 79-131-R
September 11, 1980
ALJ - Rev Denied/Appealed
9/80 p2586

(Reference D.C. Cir. Number 80-2408)

77: 103(f)

792
VULCAN MATERIALS
BARB 78-367-M
October 10, 1978
ALJ - Final
Unbound*

Section 111 of Federal Mine Safety and Health Act of 1977, which provides limited compensation for miners idled by withdrawal orders issued under Act, does not distinguish between permanent and temporary closures resulting from such orders.

Operator's intention to cease operating quarry at some point in time did not negate idled miners' entitlement to one week's compensation under §111 of Federal Mine Safety and Health Act of 1977 where permanent closing of quarry resulted from issuance of Section 104 withdrawal order and evidence showed operator would otherwise have continued operations during week in question.

77: 111
COMPENSATION - Idled Miners- Permanent v. Temporary Closure of Mine, 20.13
77: 111
COMPENSATION - Idled Miners - Permanent Closure - Effect of Withdrawal Orders, 20.13

188
W A BOWES, INC.
DENV 79-337-PM
December 15, 1979
ALJ - Final
12/79 p2089*

Company that does not "produce" ore, but separately incorporates and under contract or lease develops properties in several states for future mining operations and engages in interstate communications and shipment of supplies, "affects" commerce and is subject to provisions of 1977 Act.

COVERAGE - Commerce - Development of Property for Mining - Interstate Communications, 5.102

200
W F SAUNDERS & SONS
YORK 79-58-M
December 28, 1979
ALJ - Final
12/79 p2130*

Storeroom used to store parts for trucks that haul sand and gravel from pit to preparation plant comes within definition of "mine" in 1977 Act and is subject to inspections and citations for violations of Act, even though most of stored equipment is unrelated to preparation plant.

77: 3(h)
COVERAGE - Mines - Storeroom - Sand and Gravel Operations, 5.106

569
W R GRACE & COMPANY
DENV 79-407-PM
July 25, 1979
ALJ - Final
7/79 p933

PS

114
WADE KILGORE COAL COMPANY
CIV-1-78-160
July 16, 1979
DISTRICT COURT (NCO)
N/A*

There is no constitutionally protected right for coal mine operator to engage in unregulated intrastate activities when mining activities have effect on interstate commerce.

Fact that operator's coal is sold only intrastate does not insulate it from affecting interstate commerce and being covered by Federal Mine Safety and Health Act of 1977, since its mere presence in intrastate market would affect supply and price of coal in interstate market.

COVERAGE - Constitutional Right - Intrastate Activities - Interstate Commerce, 5.102
COVERAGE - Interstate Sale of Coal - Interstate Market, 5.102

161
WALKER STONE COMPANY
DENV 79-217-PM
October 29, 1979
ALJ - Final
10/79 p1713*

(Reference Docket Number 79-367-PM)

Citation for violation of 30 CFR §56.12-35 lacked specificity since inspector's finding that metal enclosures were improperly grounded was based on his reading of Electrical Code, but citation did not cite any particular standard in Code so as to apprise operator of exactly what it was being charged with.

30 CFR 56.12-35
ELECTRICAL HAZARDS - Improperly Grounded Metal Enclosures - Electrical Code - Lack of Specificity in Citation, 56.12 24.05

759
WALLACH CONCRETE PRODUCTS
79-422
March 5, 1980
DISTRICT COURT
N/A*

Sand and gravel operations are "mines" within meaning of Section 3(h)(1) of Federal Mine Safety and Health Act of 1977, and accordingly are within coverage of Act.

Warrantless inspections of sand and gravel operations under Federal Mine Safety and Health Act of 1977 meet standards of reasonableness and pervasiveness of regulation of particular industry set forth by U.S. Supreme Court in Marshall V. Barlow's, Inc., 436 US 307 (1978), and accordingly are consistent with Fourth Amendment to U.S. Constitution.

77: 3(h)(1)
COVERAGE OF ACT - Sand and Gravel Operation - Definition of "Mine", 5.106
77: 103(a)
INSPECTIONS - Sand and Gravel Operations - Lack of Warrant - Constitutionality, 22.05 5.05

904
WARNER COMPANY
PENN 79-161-M
April 28, 1980
ALJ - Final
4/80 p972*

Foreman's conduct in attempting to repair equipment while electrical power is on violates 30 CFR 56.12-16 but employer's defense of unforeseeable and unpreventable employee misconduct is barred because foreman's act was not willfully reckless or obviously inexplicable but stemmed only from lack of safety consciousness and Mine Safety and Health Act of 1977 is strict liability statute under which employer is liable without fault for employee's failure to exercise high degree of care imposed by Act.

30 CFR 56.12-16
DEFENSES - Electrical Hazards - Negligence of Miners - Operator's Strict Liability, 37.25 56.12

628
WASHINGTON CONSTRUCTION COMPANY
DENV 79-288-PM
October 5, 1979
ALJ - Final
10/79 p1561

PA

1044
WATSON & CASSADY COAL COMPANY
KENT 79-110
August 7, 1980
ALJ - Final
8/80 p2170

30 CFR 75.1710

115
WAUKESHA LIME & STONE COMPANY
79-C-114
March 29, 1979
DISTRICT COURT
N/A*

Federal Mine Safety and Health Act of 1977 does not permit Secretary of Labor to conduct warrantless inspection of stone quarry, in view of lack of history of federal regulation of stone quarry industry and Secretary's failure to describe any unusual circumstances in quarry business that necessitate warrantless inspections.

Secretary of Labor's motion for preliminary injunction compelling inspection of stone quarry is denied for failure to show reasonable likelihood of success on merits.

Quarry operator's motion for preliminary injunction forbidding inspection of its premises is denied for lack of showing of irreparable harm, since Secretary of Labor has represented to court that warrantless inspection will not be pursued.

77: 103
INSPECTIONS - Warrantless Search - Stone Quarry - History of Regulation, 22.05 5.106
77: 103
INJUNCTIONS - Warrantless Inspection of Quarry - Secretary's Likelihood of Success, 205.40 22.05
77: 103
INJUNCTIONS - Warrantless Inspection of Quarry - Operator's Motion to Enjoin - Lack of Irreparable Harm, 201.12 22.05

116
WAUKESHA LIME & STONE COMPANY
79-C-114
May 30, 1979
DISTRICT COURT
N/A*

Lack of comprehensive federal regulation of stone quarry industry prior to 1966 precludes finding that industry has history of pervasive regulation such that warrantless inspections are permissible.

77: 103(a)
INSPECTIONS - Warrantless Search - Stone Quarry - History of Regulation, 22.05 5.106

890
WAUKESHA LIME & STONE COMPANY
79-C-114
July 10, 1980
DISTRICT COURT - Appealed
N/A*

(Reference U.S. Supreme Court Number 80-901)

Warrantless inspection of stone quarry is not constitutionally permissible under Federal Mine Safety and Health Act of 1977 because stone quarry industry does not have long tradition of government regulation.

77: 103
INSPECTIONS - Warrentless Search - Stone Quarry - History of Regulation, 22.05 5.106
77: 103(a)

544
WAUKESHA LIME & STONE COMPANY
VINC 79-66-PM
June 5, 1979
ALJ - Review Granted
6/79 p512

77: 103(a)
77: 3(h)(1)

225
WEBSTER COUNTY COAL CORPORATION
BARB 78-185-P
June 7, 1978
ALJ - Final
Unbound*

Penalty of $5000 is warranted for operator's violation of 30 CFR §75.518 concerning overload and short circuit protection on electric equipment when operator has previously violated cited standard 10 times, because lesser penalties for life-threatening violations "do not deter operator misconduct and are inconsistent with unambiguous intent of Congress to guarantee miners the highest possible level of safety."

30 CFR 75.518
PENALTIES - Assessment - Large Amount Required to Deter Future Violations, 26.09 75.0518
29 CFR 2700.49 (I)

586
WELLS-LAMSON QUARRY COMPANY, INC.
WILK 79-33-PM
August 10, 1979
ALJ - Final
8/79 p1034

30 CFR 56.9-2
30 CFR 56.14-1

641
WELTON GRAVEL & LIMESTONE COMPANY
CENT 79-13-M
October 25, 1979
ALJ - Final
10/79 p1693

PS

1345
WEST VIRGINIA AUGER CORPORATION
WEVA 80-354
December 10, 1980
ALJ - Review Denied
Unbound

§1345 (Default decision)

25
WESTERN STATES COAL CORPORATION
DENV 78-521-P
March 1, 1979
ALJ - Final
3/79 p27*

(Reference Docket Numbers 78-522-P, 78-523-P and 78-524-P)

Presence of 440-volt power cable for belt drive in crosscut entry resting on floor, exposing it to possibility of being run over or damaged by scoop, constitutes violation of 30 CFR § 75.517, since such cable must be protected at all times and potential for damage is not only to outer insulation but to inner wires and insulation as well.

Coal company exercised good faith in achieving abatement of 30 CFR §75.313 violation for failure to properly maintain methane monitor on scoop, in light of inspector's three-day extension of abatement time to obtain parts, given because the mine is in remote area, inspector's admission that he did not believe company was using fact that parts were required as excuse for not complying with abatement, and inspector's concession that parts were probably needed.

Coal company's untimely attempt to withdraw its contest of alleged violation at hearing and its offer to pay initial assessment is offer of settlement which must be concurred in by MSHA and approved by Administrative Law Judge in civil penalty proceeding pursuant to Interim Commission Rule 27(d).

Fact that face boss may not have been in area during cleanup or when citation issued for violation of 30 CFR §75.200, for failure to follow roof control plan, is immaterial to question of whether company failed to exercise reasonable care to prevent violation, since operator is presumed to know requirements of his own roof control plan and section foreman is responsible for seeing that plan is followed during working shift.

Failure of operator to comply with any provision of its ventilation plan constitutes a violation of 30 CFR §75.316, and fact that coal was not being cut or loaded at precise moment that inspector arrived on scene and observed that line curtain had not been advanced as required by ventilation plan is immaterial to issue of fact of violation.

Introduction at hearing of inspector's notes made regarding his conversation with section foreman concerning violation of mandatory safety standards does not prejudice coal company, since notes were made at or near time of issuance of citations, company had ample opportunity to obtain notes prior to hearing, but failed to avail itself of discovery procedures, company's counsel was given opportunity to review notes at hearing and to cross-examine inspector, and company could have called section foreman as witness, but did not do so.

30 CFR 75.517
ELECTRICAL EQUIPMENT - Power Wires and Cable - Insulation and Protection - Underground Coal Mines, 75.0517
30 CFR 75.313
PENALTIES - Good Faith - Methane Monitor - Underground Coal Mines, 26.60 75.0313
29 CFR 2700.27(d) (I)
REVIEW COMMISSION PROCEDURE - Withdrawal of Contest, 35.40
30 CFR 75.200
PENALTIES - Negligence of Operator - Roof Control Plan - Underground Coal Mines, 26.30 75.0200
30 CFR 75.316
VENTILATION - Ventilation System Plan - Underground Coal Mines, 75.0316
EVIDENCE - Inspector's Notes - Conversations With Mine Foreman, 35.30

392
WESTMORELAND COAL COMPANY
HOPE 76-16
January 10, 1979
RC
3/79 p9*

(Reference Docket Number IBMA No. 76-101)

Testimony of inspector based on his notes from which he refreshed his recollection is not inadmissible hearsay, since inspector was available for cross-examination.

Withdrawal order that was terminated at exact time of beginning of next working shift after shift during which order was issued was not terminated "prior to" such next working shift; accordingly, miners on next working shift are entitled to compensation under Section 110(a) of 1969 Act for actual time of idlement or four hours, whichever is less.

69: 3(a)
EVIDENCE - Hearsay - Inspector's Use of Notes, 35.30
69: 110(a)
COMPENSATION - "Prior to" Next Working Shift - Termination of Order at Beginning of Shift, 20.13

490
WESTMORELAND COAL COMPANY
HOPE 77-326-P
October 13, 1978
ALJ - Final
Unbound

30 CFR 75.200

208
WESTMORELAND COAL COMPANY
HOPE 78-236
April 3, 1978
ALJ - Remanded
Unbound

69: 104(a)

80
WESTMORELAND COAL COMPANY
HOPE 78-236
August 22, 1979
4th Cir Court (78-1322)
N/A*

Substantial evidence supports administrative law judge's ruling that barrier pillar separating mine from flooded adjacent mine constitutes imminent danger when expert testimony for MSHA was based on published and accepted engineering formulas which could be applied to situation at issue while expert testimony for operator was based on unpublished formula that was inapplicable to situation at issue.

Fact that barrier pillar separating mine from flooded adjacent mine has been intact for one year since finding of imminent danger warrants remand to Review Commission for hearing of additional evidence on question of imminent danger.

77: 107(a)
IMMINENT DANGER - Substantial Evidence - Expert Testimony - Judicial Review, 24.50 205.10
77: 107(a)
IMMINENT DANGER - Judicial Review - Remand to Review Commission - Additional Evidence, 205.10 24.50

631
WESTMORELAND COAL COMPANY
HOPE 79-306-P
October 11, 1979
ALJ - Final
10/79 p1579

PS

752
WHITE PINE COPPER, DIVISION OF COPPER MINE
LAKE 79-223-RM
February 4, 1980
ALJ - Review Denied
2/80 p288*

(Reference Docket Numbers LAKE 79-224-RM through 79-226-RM)

Requirement that company furnish data to MSHA to prove efficacy of its ground support methods does not constitute irreparable injury or deprivation of company's property without due process of law because 1977 Act provides for expedited hearing on validity of citation or closure order.

77: 103(g)(1)
GROUND CONTROL - Furnishing of Data to MSHA - Due Process - Expedited Hearing, 57.03 22.01

81
WILLIAM R. KRAYNAK
78-2576
August 22, 1979
3rd Cir Court Appealed
N/A*

Four brothers who own and operate coal mine and are its only miners are "miners" within meaning of Federal Coal Mine Health and Safety Act of 1969 and must comply with mandatory standards.

Sale of 10,000 tons of coal to paper producer whose products are nationally distributed affects interstate commerce within meaning of Federal Coal Mine Health and Safety Act of 1969 and brings operators within coverage of 1969 Act.

69: 3(e)
COVERAGE - Owner-Operators - Owners are Only Miners, 5.105 5.104
COVERAGE - Interstate Commerce - Sale to National Producer, 5.102

157
WILLIAM R. KRAYNAK
79-586
January 7, 1980
RC - Review Denied
N/A

1337
WILLIAM R. KRAYNAK
79-614
January 7, 1980
US SUPREME COURT
N/A*

The court refused to review decisions in Kraynak V. Marshall and Stoudt's Ferry v. Marshall.

568
WILLIAMS COAL COMPANY
HOPE 77-238-P
July 24, 1979
ALJ - Final
7/79 p928

69: 109(a)
29 CFR 2700.26(c) (I)

554
WILLIAMS, INC., AND/OR MR. W. R. WILLIAMS
DENV 79-39-PM
June 25, 1979
ALJ - Final
6/79 p624

PA

687
WILLIAMSON SHAFT CONTRACTING COMPANY
VA 80-17-C
January 31, 1980
ALJ - Review Granted
1/80 p265

77: 111

718
WINDSOR POWER HOUSE COAL COMPANY
WEVA 79-193-R
March 10, 1980
ALJ - Review Denied
3/80 p671*

Area where actual mining was temporarily halted by mechanical breakdown is "working face" within meaning of Federal Mine Safety and Health Act of 1977 and operator's failure to take air readings in area, as required by operator's methane and dust control plan for all working faces, constituted violation of 30 CFR §75.316.

77: 104(b) 30 CFR 75.316
VENTILATION - Methane and Dust Control Plan - Air Readings - Working Face, 75.0316 75.00025

1094
WINDSOR POWER HOUSE COAL COMPANY
WEVA 79-199-R
July 3, 1980
ALJ - Final
7/80 p1739*

In proceeding to review withdrawal order issued under Section 104(d)(1) of 1977 Act, Commission lacks authority to review underlying Section 104(d)(1) citation solely as incident to review of related withdrawal order.

In proceeding to review withdrawal order issued under Section 104(d)(1) of 1977 Act, waiver by Secretary and mine operator of formalities involved in bringing civil penalty proceedings confers jurisdiction to review existence of violation alleged in underlying Section 104(d)(1) citation, but not to review citation's "significant and substantial" and "unwarrantable failure" findings.

Decision of Review Commission reversing prior ruling of Interior Board of Mine Operations Appeals must be given retroactive effect in view of subsequent Commission order applying such decision retroactively.

Existence of piles of loose coal shortly after beginning of day shift when no coal had been mined since 4:00 P.M. on previous day constitutes unwarrantable failure to comply with standard at 30 CFR §75.400, since accumulations should have been discovered during preshift examination.

Question of whether loose and overhanging ribs posed any danger is irrelevant to existence of violation of 30 CFR §75.202.

77: 104(d)(1)
COMMISSION JURISDICTION - Proceedings to Review Section 104(d)(1) Orders - Review of Underlying Citation, 35.02 24.20
77: 104(d)(1)
COMMISSION JURISDICTION - Review of citation Underlying Section 104(d)(1) Order - Civil Penalty Jurisdiction, 35.02 24.15 24.20 26.01
JUDGEMENT - Decision Reversing Board Precedent - Retroactivity, 35.60
30 CFR 75.400
COMBUSTIBLE MATERIALS - Accumulation - Unwarrantable Failure - Lapse of Time Since Mining Activity, 75.0400 24.20
30 CFR 75.202
ROOF SUPPORT - Loose and Overhanging Ribs - Existence of Danger, 75.0202

366
WOLF CREEK COLLIERIES COMPANY
PIKE 78-70-P
September 21, 1978
ALJ - Review Granted
Unbound

77: 104(c)(2)
30 CFR 75.301

399
WOLF CREEK COLLIERIES COMPANY
PIKE 78-70-P
March 26, 1979
RC - Remand
3/79 p21*

Validity of withdrawal order is not at issue in civil penalty proceeding brought under Section 109 of Federal Coal Mine Health and Safety Act of 1969, and it is error to vacate withdrawal order in such proceeding.

69: 104(c)(2)
REVIEW COMMISSION PROCEDURE - Penalty Proceeding - Consideration of Withdrawal Order, 35.08 24.01
69: 109(a)(3)

531
WOLF CREEK COLLIERIES COMPANY
PIKE 78-70-P
May 4, 1979
ALJ - Final
5/79 p365

PA

537
WOLFGANG BROTHERS COAL COMPANY
WILK 78-327-P
May 24, 1979
ALJ - Final
5/79 p421

PS

797
YOUGHIOGHENY & OHIO COAL COMPANY
VINC 78-463
January 16, 1979
ALJ - Appealed
Unbound*

Section 105(c)(2) of 1977 Act, authorizing immediate and temporary reinstatement of miner who files complaint of discrimination pending final adjudication of his case, created additional substantive rights, obligations, and liabilities which may not be retroactively applied to cases arising prior to effective date of that section.

Thirty day filing period of Section 110(b)(2) of 1969 Act is jurisdictional, and not statute of limitations subject to tolling under circumstances advanced by Secretary and employee's failure to file his complaint within such period bars his complaint.

77: 105(c)(2)
DISCRIMINATION - Coverage - Retroactivity of 1977 Act, 5.101 30.01
69: 110(b)(2)
DISCRIMINATION - Filing - Timeliness, 35.103 30.03

408
YOUGHIOGHENY & OHIO COAL COMPANY
VINC 78-463
February 23, 1979
RC - Denying Petition
Unbound

77: 105(c)(2)
69: 110(b)(2)

71
YOUNGSTOWN MINES CORPORATION
HOPE 76-231
August 15, 1979
HC
8/79 p990*

(Reference Old Docket Number IBMA No. 76-106)

Section 110(a) of Federal Coal Mine Health and Safety Act of 1969 requires operator to compensate miners idled for final four hours of shift when miners, pursuant to withdrawal order issued prior to shift, performed abatement work during first hours of shift and then were sent home.

Review Commission, in compensation proceeding, declined to consider operator's defense that work stoppages caused failure to abate and withdrawal order because determination of whether work stoppages were lawful should be made by other tribunals.

Compensation provision of 1969 Act is best served by allowing interest on compensation awards to miners idled by withdrawal orders, even though 1969 Act does not expressly provide for interest.

69: 110(a)
COMPENSATION - Withdrawal Order - Abatement Work - Idled Workers, 20.13
COMPENSATION - Withdrawal Order - Failure to abate - Work Stoppage Defence, 20.13 16.01
COMPENSATION - Interest on Awards, 20.13 35.50

215
YOUNGSTOWN MINES CORPORATION
HOPE 78-22
May 10, 1978
ALJ - Final
Unbound

69: 104(c)(1)
30 CFR 75.200
30 CFR 75.512

1085
ZIEGLER COAL COMPANY
LAKE 80-292-D
June 17, 1980
ALJ - Interloc Review Denied
Unbound

1343
ZIEGLER COAL COMPANY
LAKE 80-292-D
December 16, 1980
DISTRICT COURT - So. Ill.
N/A*

(Reference District Court Number 80-4494)

Argument of operator, seeking injunctive relief in U.S. district court, that section foreman who complained of discharge sought temporary reinstatement under Federal Mine Safety and Health Act is not "miner" as contemplated by Act is rejected, because district court is precluded from disturbing administrative finding that foreman is miner by Section 106(a)(1) of Act which specifically designates review of such factual determinations to U.S. courts of appeals.

Secretary's claim, that U.S. district court is not proper forum for operator's request for injunctive relief from temporary reinstatement of miner because Section 106 (a)(1) of Federal Mine Safety and Health Act mandates that review of Commission orders lies solely with U.S. courts of appeals, is rejected because operator's due process claim is not within restrictions of Section 106(a)(1).

Operator's claim, that temporary reinstatement procedures and subsequent review hearing created by Section 105(c) of Federal Mine Safety and Health Act violate due process requirements because of lack of full evidentiary hearing prior to issuance of reinstatement order and limited scope of subsequent review hearing, is rejected, because encouraging miners to report without hesitation unsafe conditions in mines is legitimate governmental goal and temporary reinstatement procedures under Act are rational

means of achieving that goal.

77: 106(a)(1)
COURT JURISDICTION - Section Foreman's Status as "Miner" - Court of Appeals Review, 201.02 5.105
77: 106(a)(1)
COURT JURISDICTION - Review of Commission Orders - Due Process Claim, 201.02 5.05
77: 105(c)
DISCRIMINATION - Temporary Reinstatement - Due Process Objection, 30.01 30.50 5.05

CODE TABLE

(See Guide to Users, p. 9)

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Federal Coal Mine Health & Safety Act of 1969 285

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29 CFR Part 2700 (Commission's Procedural Rules) 339

30 CFR Part 50 (MSHA's Health and Safety Standards - Metal and NonMetallic Open Pit Mines) . . . 345

30 CFR Part 56 (MSHA's Health and Safety Standards - Sand, Gravel, and crushed stone operations). . 354

30 CFR Part 57 (MSHA's Health and Safety Standards - Metal and NonMetallic Underground Mines). . 370

30 CFR Part 70 (MSHA's Health Standards - Underground Mines) 378

30 CFR Part 71 (MSHA's Health Standards - Surface Work Areas of Underground Coal Mines and Surface Coal Mines) 381

30 CFR Part 75 (MSHA's Safety Standards - Underground Coal Mines) 382

30 CFR Part 77 (MSHA's Safety Standards, Surface Coal Mines and Surface Work Areas of Underground Coal Mines) 436

30 CFR Part 100 (MSHA's Regulations re Civil Penalties) . . . 452

Section of Act/Reg	Case Identification	Summary
FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969		
69: 2(e)	GRUNDY MINING COMPANY, INC. BARB 78-168-P June 19, 1978 ALJ - Review Denied & Appealed Unbound	
69: 3(a)	WESTMORELAND COAL COMPANY HOPE 76-16 January 10, 1979 RC 3/79 p9*	Testimony of inspector based on his notes from which he refreshed his recollection is not inadmissible hearsay, since inspector was available for cross-examination.
69: 3(d)	BUFFALO MINING COMPANY HOPE 78-333-P October 30, 1979 ALJ - Final 10/79 p1740*	Mine owner is liable under 1969 Act for violations committed by independent subcontractor engaged by owner to install coal stacker on mine property.
	CONSOLIDATION COAL COMPANY VINC 77-16-P May 17, 1979 RC 5/79 p347*	Operator is liable under 1969 Act for independent contractor's violations pursuant to commission's decision in Republic Steel Corporation.
	COWIN & COMPANY, INC. BARB 74-259 April 11, 1979 RC - on Remand 4/79 p20*	Independent construction contractor performing work on mine premises under contract with mine owner is "operator" of mine within meaning of Federal Coal Mine Health and Safety Act of 1969.
	KAISER STEEL CORPORATION DENV 77-13-P May 17, 1979 RC 5/79 p343*	Operator is liable under 1969 Act for its independent contractor's violations pursuant to commission's decision in Republic Steel Corporation.
	KINTZEL COAL COMPANY WILK 78-13-P November 13, 1978 ALJ - Final Unbound	
	REPUBLIC STEEL CORPORATION MORG 76-21 April 11, 1979 RC - Appealed - Dismissed 4/79 p5*	Mine owner is liable under Federal Coal Mine Health and Safety Act of 1969 for violations committed by independent contractor engaged by owner to perform work on owner's premises.

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Section of Act/Reg	Case Identification	Summary
69: 3(e)	HUBERT WILLIAMS VINC 78-102-P August 31, 1979 ALJ - Final 8/79 p1292*	Section foreman in charge of area of mine where roof fall occurred is agent of corporate operator as defined by section 3(e) of Federal Coal Mine Health and Safety Act of 1969.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185*	Definitions of "operator" and "coal mine" in §§3(e) and (h), Federal Coal Mine Health and Safety Act of 1969, are broad enough to encompass operator of strip mine that has not yet produced coal and strip mine itself.
	WILLIAM R. KRAYNAK 78-2576 August 22, 1979 3rd Cir Court Appealed N/A*	Four brothers who own and operate coal mine and are its only miners are "miners" within meaning of Federal Coal Mine Health and Safety Act of 1969 and must comply with mandatory standards.
69: 3(g)	KINTZEL COAL COMPANY WILK 78-13-P November 13, 1978 ALJ - Final Unbound	
69: 3(h)	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185*	Definitions of "operator" and "coal mine" in §§3(e) and (h), Federal Coal Mine Health and Safety Act of 1969, are broad enough to encompass operator of strip mine that has not yet produced coal and strip mine itself.
69: 3(j)	ALABAMA BY-PRODUCTS CORPORATION BARB 77-73 October 13, 1978 ALJ - Review Granted/ Vacated Unbound	

Section of Act/Reg	Case Identification	Summary
69: 3(j)	EASTERN ASSOCIATED COAL CORPORATION HOPE 77-183 April 24, 1978 ALJ - Final Unbound*	Discovery of methane in area 3 feet by 4 feet by 8 inches in amounts of 2.4 volume per centum when tested under the boom of 7 shuttle cars discharging coal on belt conveyor tail unit where there was a source of ignition, and ignition is sufficient to burn shuttle car operator sitting beside methane accumulation and result in mine disaster, consitutes an imminent danger per se under Section 3(j) and 302(h)(2) of 1969 Act; accordingly, withdrawal order issued under Section 104 of Act is affirmed.
	ITMANN COAL COMPANY HOPE 78-122 December 15, 1978 ALJ - Review Denied Unbound	
	THE PITTSBURG & MIDWAY COAL MINING COMPANY BARB 74-666 April 21, 1980 RC 4/80 p787*	Bare wire spliced in trailing cable to loading machine that was lying in accumulations of wet coal and coal dust up to six inches in depth presented source of fire or electrocution and warranted finding of imminent danger pursuant to Federal Coal Mine Health and Safety Act of 1969. Accumulations of loose coal and coal dust did not constitute imminent danger to miners because area had been watered down and rock dusted and there were no gassy emissions in area, reducing possibility of fire or explosion. Imminent danger withdrawal order issued when inspector concluded that overhanging ribs were loose was vacated because inspector examined for five minutes only seven or eight of 50 ribs in area and never hit ribs with crowbar or other instrument to test looseness.
69: 4	KINTZEL COAL COMPANY WILK 78-13-P November 13, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
69: 4	REPUBLIC STEEL CORPORATION MORG 76-21 April 11, 1979 RC - Appealed - Dismissed 4/79 p5*	Fact that only employees of independent contractor were endangered by contractor's violations does not warrent relieving mine owner of liability for such violations.
69: 102(b)	THE TEXOLINE MINING COMPANY 79-2373 February 28, 1980 US Appeals - 5th Cir N/A*	
69: 103(a)	THE TEXOLINE MINING COMPANY 79-2373 February 28, 1980 5th Cir Court (NCR) N/A*	
		Warrantless inspections of gravel pits pursuant to 1969 Act are constitutional since inspection provisions in Act are more narrowly drawn than comparable OSHA provision. when entry is refused, and Congress was reasonable in concluding that safety concerns in mines justify warrantless inspections.
69: 103(b)(1)	KINTZEL COAL COMPANY WILK 78-13-P November 13, 1978 ALJ - Final Unbound	
69: 103(f)	EASTERN ASSOCIATED COAL CORPORATION HOPE 75-699 September 2, 1980 RC 9/80 p2467*	Secretary of Interior had jurisdiction to review withdrawal order issued pursuant to Section 103(f) of 1969 Act and Federal Mine Safety and Health Review Commission succeeded to Interior Secretary's power to adjudicate Section 103(f) case pending before Secretary on effective date of 1977 act.

Section of Act/Reg	Case Identification	Summary
69: 103(f)		Withdrawal order issued under Section 103(f) of 1969 Act, after cable hook became loose and shuttle car pinned miner to rib, was valid because Section 103(f) order may be used to ensure that accident scene remains undisturbed if accident investigation is necessary to determine cause of accident and means to prevent recurrence.
		Requirements in modification of Section 103(f) order issued by inspector under 1969 Act, which were conditions precedent to termination of order, were valid even though requirements imposed duties upon operator that were not imposed by mandatory health or safety standard, because Section 103(f) permits inspector to issue orders appropriate to insure safety of any person in mine and requires that operator obtain inspector's approval of plan to return affected areas of mine to normal.
	EASTERN ASSOCIATED COAL CORPORATION HOPE 76-289 September 26, 1980 ALJ - On Remand 9/80 p2071*	Modification by judge of withdrawal order issued under Section 103(f) of 1969 Act changing termination time to seven hours earlier is appropriate where delay in termination time was not caused by safety concern and preserving scene of minor methane explosion was not crucial to determination of accident's cause, after tests were conducted which showed little chance of recurrence.
	PEABODY COAL COMPANY VINC 77-40 March 1, 1978 ALJ - Review Granted Unbound	
		Miners prevented from working last hour of shift by withdrawal order issued under §104(a) of Federal Coal Mine Health and Safety Act of 1969 are entitled to compensation for one hour even though miners were idled for entire shift by §103(f) withdrawal order.

Section of Act/Reg	Case Identification	Summary
69: 103(i)	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-8 May 23, 1978 ALJ - Final Unbound	
69: 104(a)	ALABAMA BY-PRODUCTS BARB 77-73 October 13, 1978 ALJ - Review Granted Unbound	
	ALABAMA BY-PRODUCTS CORPORATION BARB 77-73 October 13, 1978 ALJ - Review Granted/ Vacated Unbound	
	AMAX, INC. DENV 78-300 August 30, 1978 ALJ - Final Unbound	
	BUFFALO MINING COMPANY HOPE 78-333-P October 30, 1979 ALJ - Final 10/79 p1740*	Mine owner is liable under 1969 Act for violations committed by independent subcontractor engaged by owner to install coal stacker on mine property.
	C F & I STEEL CORPORATION DENV 77-53 January 16, 1979 ALJ - Final Unbound	
	CHARLES T. SINK 77-2614 January 24, 1980 4th Cir Court N/A*	Small one-man mine is not exempt from warrantless inspections pursuant to 1969 Act since Congress has legitimate interest in protecting all persons from hazardous conditions and operator's privacy is protected because inspector must get injunction if refused entry.

Section of Act/Reg	Case Identification	Summary
69: 104(a)	CONSOLIDATION COAL COMPANY PITT 77-28 July 31, 1978 ALJ - Final Unbound*	Workers in mine who are idled by issuance of withdrawal order in preparation plant are entitled to compensation for idle time, despite fact that operator voluntarily withdrew miners from mine prior to issuance of order, because evidence established that operation of mine could not have continued for more than a few more hours if preparation plant was not operating.
	CONSOLIDATION COAL COMPANY PITT 77-88 July 7, 1978 ALJ - Final Unbound*	Miners who are idled by issuance of withdrawal order in their operator's mine are entitled to compensation for idle time, despite fact that operator voluntarily withdrew miners prior to issuance of order.
	EASTERN ASSOCIATED COAL CORPORATION HOPE 77-183 April 24, 1978 ALJ - Final Unbound*	Test for imminent danger under Section 3(j) of 1969 Act to justify issuance of withdrawal order under Section 104(a) of 1969 Act is objective: whether a reasonable man with inspector's education and experience would conclude that facts indicate an impending accident or disaster, likely to occur at any moment, but not necessarily immediately.
	EASTERN ASSOCIATED COAL CORPORATION HOPE 77-36 April 14, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION MORG 77-74 July 23, 1979 ALJ - Final 7/79 p919*	Dump truck's braking system constituted imminent danger under §104(a) of Federal Coal Mine Health and Safety Act of 1969 as evidenced by facts that air pressure dropped from 120 to 70 pounds per square inch when truck operator applied brakes, inspectors heard hissing noises when brakes were tested and found brakes could not hold properly, and brake diaphragm was cracked.

Section of Act/Reg	Case Identification	Summary
69: 104(a)	EASTERN ASSOCIATED COAL CORPORATION HOPE 77-183 April 24, 1978 ALJ - Final Unbound*	Discovery of methane in area 3 feet by 4 feet by 8 inches in amounts of 2.4 volume per centum when tested under the boom of 7 shuttle cars discharging coal on belt conveyor tail unit where there was a source of ignition, and ignition is sufficient to burn shuttle car operator sitting beside methane accumulation and result in mine disaster, consitutes an imminent danger per se under Section 3(j) and 302(h)(2) of 1969 Act; accordingly, withdrawal order issued under Section 104 of Act is affirmed.
	ISLAND CREEK COAL COMPANY BARB 78-12-P April 7, 1978 ALJ - Final Unbound*	
	ISLAND CREEK COAL COMPANY HOPE 78-300 July 12, 1978 ALJ - Final Unbound	
	ITMANN COAL COMPANY HOPE 78-122 December 15, 1978 ALJ - Review Denied Unbound	
	PEABODY COAL COMPANY VINC 77-40 November 14, 1979 HC 11/79 p1785*	Withdrawal order issued under §104(a) of Federal Coal Mine Safety and Health Act of 1969 that informed operator that gob fire existed in specified area of mine sufficiently apprised operator of alleged imminent danger. Withdrawal order issued under §104(a) of Federal Coal Mine Health and Safety Act of 1969 was not based on "stale information" and "speculation and conjecture" when inspector, on basis of data obtained three days earlier, concluded that gob fire was still burning or could reignite. Withdrawal order issued under Federal §104(a) of Federal Coal Mine Health and Safety Act of 1969 was valid even though issued by inspector when inspector's supervisor actually made determination that imminent danger existed.

Section of Act/Reg	Case Identification	Summary
69: 104(a)	PETER WHITE COAL MINING CORPORATION HOPE 77-268 June 29, 1978 ALJ - Final Unbound	Vacation of withdrawal order is justified when Mine Safety and Health Administration fails to prove that cited company was "operator" of area closed by order and fails to prove whether area involved was part of coal mine operated by company.
	STOUDT'S FERRY PREPARATION COMPANY 78-2364 July 19, 1979 3rd Cir Court Appealed N/A*	Warrantless inspections under Mine Act withstand constitutional challenge since mining industry is pervasively regulated and Mine Act inspection provision places limitations on use of inspection and is more narrowly drawn than comparable Occupational Safety and Health Act provision.
	THE PITTSBURG & MIDWAY COAL MINING COMPANY BARB 74-666 April 21, 1980 RC 4/80 p787*	Trailing cable of bolting machine that was "mashed" under wheels of cutting machine and was lying in two to six inches of loose coal presented electrocution hazard and constituted imminent danger to miners pursuant to §104(a) of Federal Coal Mine Health and Safety Act of 1969.
	WESTMORELAND COAL COMPANY HOPE 78-236 April 3, 1978 ALJ - Remanded Unbound	
69: 104(b)	ALABAMA BY-PRODUCTS CORPORATION BARB 78-56 June 9, 1978 ALJ - Final Unbound	
	AMHERST COAL COMPANY HOPE 78-98 March 17, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
69: 104(b)	BERNITSKY BROTHERS COAL COMPANY 79-1453 March 19, 1980 3rd Cir Court/Appealed N/A*	Action for damages brought by mine operator under Federal Tort Claims Act alleging that MESA inspector's issuance of withdrawal order pursuant to §104(b) of Federal Coal Mine Health and Safety Act of 1969 caused mine collapse is dismissed because inspector's decisions regarding extensions of abatement time and withdrawal orders fall within scope of discretionary function exception to Federal Tort Claims Act.
	CONSOLIDATION COAL COMPANY PENN 80-255-R September 22, 1980 ALJ - Final Unbound*	Mine Safety and Health Administration inspector abuses enforcement discretion in refusing to extend period for abatement of violation of accumulation standard, 30 CFR 75.400, and in issuing Section 104(b) withdrawal order, where operator made extraordinary good faith efforts and cleaned up all accumulations except for one small pile and where no increase in hazard would have resulted from requested short extension.
	D & M CONTRACTORS DENV 77-99-P May 15, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 77-23 April 14, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION MORG 75-393 October 23, 1979 RC 10/79 p1473	Lack of evidence that defective jitney could not have been rendered inoperable within period for abatement specified in notice of violation requires finding that such abatement period was reasonable and supports issuance of withdrawal order for failure to abate.

Section of Act/Reg	Case Identification	Summary
69: 104(b)	HOWARD MULLINS 77-1086 December 31, 1980 US Appeals - DC Circuit N/A*	Appeals court will not apply its prior decision holding notices of violation issued under 1969 Act not subject to Act's review procedures retroactively to case pending at time of prior decision where parties to present case could not reasonably have anticipated such decision, purposes of Act would not be furthered by retroactive application, and parties would suffer hardship of repetitive proceedings to obtain ruling on merits of case.
	PETER WHITE COAL MINING CORPORATION HOPE 78-23 April 24, 1979 ALJ - Final 4/79 p255	
		Withdrawal order issued under §104(b) of 1969 Act must be vacated where inspector failed to give any consideration to extension of time allowed for abatement of violation resulting in order, since basic requirement for issuance of such order is reasonable determination by inspector that time should not be extended.
	ROCHESTER & PITTSBURGH COAL COMPANY PITT 77-109 March 22, 1978 ALJ - Final Unbound	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-52-P June 26, 1978 ALJ - Final Unbound	
69: 104(c)	CLINCHFIELD COAL COMPANY NORT 78-337-P February 4, 1980 ALJ - Final 2/80 p290	

Section of Act/Reg	Case Identification	Summary
69: 104(c)	ROCHESTER & PITTSBURGH COAL COMPANY PITT 77-109 March 22, 1978 ALJ - Final Unbound	
69: 104(c)(1)	ALABAMA BY-PRODUCTS CORPORATION BARB 78-73 June 9, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION PITT 77-58 May 11, 1978 ALJ - Final Unbound	
	HARMAR COAL COMPANY PITT 78-129 March 31, 1978 ALJ - Final Unbound	
	HARMAR COAL COMPANY PITT 78-9 April 26, 1978 ALJ - Final Unbound	
	KITCHEKAN FUEL CORPORATION HOPE 77-281 June 5, 1978 ALJ - Final Unbound	
	LEECO, INC. BARB 78-117-P April 28, 1978 ALJ - Final Unbound	
	OLD BEN COAL COMPANY VINC 75-313 July 3, 1980 ALJ - Final 7/80 p1783	

Section of Act/Reg	Case Identification	Summary
69: 104(c)(1)	OLD BEN COAL COMPANY VINC 75-267 June 2, 1980 RC 6/80 p1187*	Withdrawal orders issued pursuant to Section 104(c)(1) of Federal Coal Mine Health and Safety Act of 1969 more than 90 days after underlying notice of violation were valid since one withdrawal order was issued pursuant to §104(c)(1) within 90 days of underlying notice of violation, any subsequent orders were in effect §104(c)(2) orders, which do not have to be issued within 90 days, and judge had authority to modify orders from §104(c)(1) to (c)(2).
	ROCHESTER & PITTSBURGH COAL COMPANY PITT 77-116 December 8, 1978 ALJ - Final Unbound	
	YOUNGSTOWN MINES CORPORATION HOPE 78-22 May 10, 1978 ALJ - Final Unbound	
69: 104(c)(2)	C F & I STEEL CORPORATION DENV 76-46 December 2, 1980 RC 12/80 p3459*	Prerequisite to issuance of withdrawal under Section 104(c)(2) of 1969 Act was absence of intervening "clean" inspection of entire mine and it was Mining Enforcement and Safety Administration's obligation to present prima facie case of such absence; secretary's argument, that only complete regular quarterly inspection can constitute "clean" inspection of entire mine, is rejected.
	CONSOLIDATION COAL COMPANY PITT 78-116 May 15, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-109 May 30, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
69: 104(c)(2)	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-8 May 23, 1978 ALJ - Final Unbound	
	HARMAR COAL COMPANY PITT 78-129 March 31, 1978 ALJ - Final Unbound	
	NACCO MINING COMPANY VINC 78-22 May 8, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY VINC 77-88 October 6, 1978 ALJ - Final Unbound	Opening between shuttle car junction box and junction box cover in excess of .009 inch as not an "unwarrantable failure" meriting issuance of withdrawal order under Section 104(c)(2) of 1969 Act because no evidence indicates that operator knew or should have known that relevant junction box was in impermissible condition at time of inspection, operator had complied with regulations concerning permissibility checks, and it was not established that operator failed to abate impermissible condition of junction box because of lack of due diligence.
	PEABODY COAL COMPANY VINC 77-90 September 29, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY VINC 78-1 December 13, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
69: 104(c)(2)	PETER WHITE COAL MINING CORPORATION HOPE 78-23 April 24, 1979 ALJ - Final 4/79 p255*	Issuance of withdrawal order under §104(c)(2) of Federal Coal Mine Health and Safety Act of 1969 requires underlying §104(c)(1) withdrawal order as prerequisite.
	SEWELL COAL COMPANY HOPE 78-44 March 30, 1978 ALJ - Final Unbound*	
	WOLF CREEK COLLIERIES COMPANY PIKE 78-70-P March 26, 1979 RC - Remand 3/79 p21*	Validity of withdrawal order is not at issue in civil penalty proceeding brought under Section 109 of Federal Coal Mine Health and Safety Act of 1969, and it is error to vacate withdrawal order in such proceeding.
69: 104(e)	JIM WALTER RESOURCES, INC. BARB 77-266-P October 19, 1978 ALJ - Review Granted 8/80 p2090	
	MATHIES COAL COMPANY PITT 77-39-P May 5, 1978 ALJ - Final Unbound	
69: 104(f)	MATHIES COAL COMPANY PITT 77-39-P May 5, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
69: 105(a)	CARBON FUEL COMPANY Hope 75-800 January 19, 1979 RC - On Remand Unbound*	Decision of Interior Board of Mine Operations Appeals vacating notice of violation upon application for review by mine operator under Section 105(a) of 1969 Act is vacated and application for review is dismissed upon recommendation of parties and in view of subsequent closure of mine and termination of notice, notwithstanding decision of appeals court holding that Board was without jurisdiction to review such notice of violation and remanding case to Review Commission for further proceedings.
69: 105(a)(1)	ALEXANDER BROTHERS, INC. HOPE 78-161 March 6, 1979 RC 3/79 p17*	Review Commission lacks jurisdiction over applications for review filed after expiration of 30-day filing period prescribed in Section 105(a)(1) of 1969 Act.
69: 105(b)	THE PITTSBURG & MIDWAY COAL MINING COMPANY BARB 74-666 April 21, 1980 RC 4/80 p787*	Administrative law judge acted correctly in modifying withdrawal order by deleting references to violations that were found not to constitute imminent danger because §105(b) of Federal Coal Mine Health and Safety Act of 1969 specifically permitted modification of imminent danger withdrawal orders after hearing.
69: 109	PETER WHITE COAL MINING CORPORATION HOPE 78-23 April 24, 1979 ALJ - Final 4/79 p255*	Finding that withdrawal orders in review proceedings are invalid does not bar assessment of civil penalties in consolidated penalty proceedings, since invalidity of withdrawal order may not be considered as mitigating factor in civil penalty proceeding under §109 of 1969 Act.
	PONTIKI COAL CORPORATION PIKE 78-420-P October 25, 1979 RC - Appealed - Dismissed 10/79 p1476*	Validity of withdrawal order may not be considered by Commission or its judges in civil penalty proceeding based on such order.

Section of Act/Reg	Case Identification	Summary
69: 109(a)	C F & I STEEL CORPORATION DENV 78-44-P September 12, 1978 ALJ - Final Unbound	
	COWIN & COMPANY, INC. HOPE 76-210-P December 28, 1979 4th Cir Court (78-1825) N/A*	Secretary of Labor's action under §109(c) of 1969 Act against independent contractor is remanded to Federal Mine Safety and Health Review Commission for Safety and Health Review Commission for amendment of civil charges since independent contractors cannot be held liable under §109(c) as "agents" of coal mine operator, but are "operators" subject to liability under §109(a) of Act.
	D & M CONTRACTORS DENV 77-99-P May 15, 1978 ALJ - Final Unbound	
	E LAWSON COAL COMPANY, INC. PIKE 78-12-P June 15, 1978 ALJ - Final Unbound	
	HOWARD STEPP COAL COMPANY PIKE 78-30-P July 13, 1978 ALJ - Final Unbound	
	KAISER STEEL CORPORATION DENV 77-13-P October 10, 1978 ALJ - Final 8/80 p2054	
	MULZER CRUSHED STONE COMPANY VINC 78-3-P April 28, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
69: 109(a)	OLD BEN COAL COMPANY VINC 77-61-P April 28, 1978 ALJ - Final Unbound*	
	SEWELL COAL COMPANY HOPE 77-310-P March 28, 1978 ALJ - Final Unbound	
	WILLIAMS COAL COMPANY HOPE 77-238-P July 24, 1979 ALJ - Final 7/79 p928	
69: 109(a)(1)	ALABAMA BY-PRODUCTS CORPORATION BARB 78-146-P September 21, 1978 ALJ - Final Unbound	
	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
	BUFFALO MINING COMPANY HOPE 78-333-P October 30, 1979 ALJ - Final 10/79 p1740*	In computing amount of penalty, gross negligence of independent contractor can be imputed to mine owner since legislative history of 1969 Act indicates that act is remedial in nature and mine ower should be encouraged to ensure protection of employees of independent contractors.
	CAMBRIA COAL COMPANY PITT 76-108-P October 7, 1980 RC - Affirming 10/80 p2756*	Judge did not err in considering size of parent company in assessing penalty for wholly-owned subsidiary because consideration of size of subsidiary alone and review of record evidence in view of criteria of Section 109(a)(1) of 1969 Act support propriety of assessed penalties.
	CHRISTOPHER COAL COMPANY MORG 76-8-P October 25, 1978 RC 3/79 P1*	

Section of Act/Reg	Case Identification	Summary
69: 109(a)(1)	CONSOLIDATION COAL COMPANY VINC 77-122-P July 6, 1978 ALJ - Final Unbound	
	COWIN & COMPANY, INC. HOPE 76-210-P September 8, 1980 ALJ - Review Granted 9/80 p2543	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-306-P September 27, 1978 ALJ - Final Unbound	
	EMPIRE ENERGY CORPORATION DENV 78-442-P December 8, 1978 ALJ - Final Unbound*	Although information in MSHA's 1978 Inspector's Manual for underground coal mines does not constitute mandatory standards, to the extent that manual references are not contrary to 1969 Act or implementing regulations, there is nothing illegal or arbitary in an inspector applying those guidelines to his interpretation of meaning or application of any given standard, so long as his interpretation does not expand on or is not totally contradictory to intent and clear meaning of standard cited.
	GRUNDY MINING COMPANY, INC. BARB 78-168-P June 19, 1978 ALJ - Review Denied & Appealed Unbound	
	ISLAND CREEK COAL COMPANY BARB 78-12-P April 7, 1978 ALJ - Final Unbound*	

Section of Act/Reg	Case Identification	Summary
69: 109(a)(1)	JONES & LAUGHLIN STEEL CORPORATION PITT 77-32-P March 24, 1978 ALJ - Final Unbound	
	KAISER STEEL CORPORATION DENV 78-39-P July 19, 1978 ALJ - Final Unbound	
	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
	KERMIT COAL COMPANY, INC. HOPE 77-293-P August 3, 1978 ALJ - Final Unbound	
	LEECO, INC. BARB 78-117-P April 28, 1978 ALJ - Final Unbound	
	LEECO, INC. BARB 78-118-P July 10, 1978 ALJ - Final Unbound	
	MATHIES COAL COMPANY PITT 77-39-P May 5, 1978 ALJ - Final Unbound	
	P M & B COAL COMPANY, INC. MORT 78-13-P June 13, 1978 ALJ - Final Unbound*	

Section of Act/Reg	Case Identification	Summary
69: 109(a)(1)	PEABODY COAL COMPANY DENV 77-57-P October 11, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY DENV 77-77-P August 30, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	RUSHTON MINING COMPANY PITT 75-399-P July 9, 1979 RC 7/79 p794*	Judge did not err in conclusions regarding gravity of violations and properly considered statutory criteria set forth in §109(a)(1) of 1969 Act.
	SHAMROCK COAL COMPANY BARB 78-137-P March 21, 1979 ALJ - Final 3/79 p131	
	SHAMROCK COAL COMPANY BARB 78-138-P March 21, 1979 ALJ - Final 3/79 p127	
	SHAMROCK COAL COMPANY BARB 78-495-P March 21, 1979 ALJ - Final 3/79 p123	
	SHAMROCK COAL COMPANY BARB 78-595-P March 21, 1978 ALJ - Final 3/79 p119	
	SHAMROCK COAL COMPANY BARB 78-637-P March 21, 1979 ALJ - Final 3/79 p137	

Section of Act/Reg	Case Identification	Summary
69: 109(a)(1)	SUNSHINE COLLERIES, INC NORT 78-56-P June 23, 1978 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION HOPE 78-7-P May 19, 1978 ALJ - Final Unbound*	
69: 109(a)(3)	CONSOLIDATION COAL COMPANY VINC 77-132-P January 22, 1980 RC 1/80 p3*	Dismissal of operator's motion, after request for hearing, to have administrative law judge accept payment of proposed penalty and dismiss case is affirmed, since amount of penalty is triable issue and judge may determine amount of penalty on de novo basis.
	WOLF CREEK COLLIERIES COMPANY PIKE 78-70-P March 26, 1979 RC - Remand 3/79 p21*	
69: 109(a)(4)	FOWLER & CHANEY COAL COMPANY 78-0174-B February 19, 1980 DISTRICT COURT N/A*	Operator may obtain in district court de novo review of issue of liability as to violations of 1969 Act because Act does not provide for review by court of appeals of Secretary of Interior's findings as to whether violation occurred.
69: 109(c)	COWIN & COMPANY, INC. HOPE 76-210-P December 28, 1979 4th Cir Court (78-1825) N/A*	Secretary of Labor's action under §109(c) of 1969 Act against independent contractor is remanded to Federal Mine Safety and Health Review Commission for Safety and Health Review Commission for amendment of civil charges since independent contractors cannot be held liable under §109(c) as "agents" of coal mine operator, but are "operators" subject to liability under §109(a) of Act.
	EVERETT PROPST & ROBERT STEMPLE MORG 78-28-P August 31, 1978 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
69: 109(c)	GEORGE A. HARVEL DENV 77-40-P November 16, 1978 ALJ - Appealed - Dismissed Unbound	Although fact of violation of mandatory safety standard by corporate coal mine operator is necessary element of proof in establishing violation by agent of corporate operator, such proof is not legally required to be established in separate or consolidated proceeding against operator as condition precedent to instituting proceeding against agent under section 109(c) of Federal Coal Mine Health and Safety Act of 1969.
	HUBERT WILLIAMS VINC 78-102-P August 31, 1979 ALJ - Final 8/79 p1292*	Section foreman is liable under §109(c) of Federal Coal Mine Health and Safety Act of 1969 because operator violated 30 CFR §75.200, foreman acted as agent of corporate operator, and foreman knew about existence of exposed roof rock and permitted activities to proceed in violation of roof control plan. In assessing civil penalty against section foreman under §109(c) of Federal Coal Mine Health and Safety Act of 1969, seriousness of violation, degree of negligence involved, and financial condition of foreman, including his salary, are considered.
	JIM WALTER RESOURCES, INC. BARB 77-266-P October 19, 1978 ALJ - Review Granted Unbound	
69: 110(a)	CONSOLIDATION COAL COMPANY PITT 77-28 July 31, 1978 ALJ - Final Unbound*	Workers in mine who are idled by issuance of withdrawal order in preparation plant are entitled to compensation for idle time, despite fact that operator voluntarily withdrew miners from mine prior to issuance of order, because evidence established that operation of mine could not have continued for more than a few more hours if preparation plant was not operating.

Section of Act/Reg	Case Identification	Summary
69: 110(a)	CONSOLIDATION COAL COMPANY PITT 77-88 July 7, 1978 ALJ - Final Unbound*	Miners who are idled by issuance of withdrawal order in their operator's mine are entitled to compensation for idle time, despite fact that operator voluntarily withdrew miners prior to issuance of order.
	F M V COAL CORPORATION HOPE 77-128 February 26, 1980 ALJ - Final 2/80 p575*	Issuance of withdrawal order pursuant to section 104(c)(1) of 1969 Act is justified when operator fails to comply with requirements of 30 CFR §75.1100-2(b) by failing to provide sufficient outlet valves for waterlines, and miners who are idled by withdrawal order are entitled to receive full compensation for lost time.
	KANAWHA COAL COMPANY HOPE 77-193 September 4, 1979 RC - Affirmed ALJ 9/79 p1299*	Section 110(a) of Federal Coal Mine Health and Safety Act of 1969 requires Operator to compensate miners idled by withdrawal order for up to maximum of four hours of next working shift in addition to hours of next shift that they choose to work. Miners idled by withdrawal order who refused alternative work on first four hours of shift were properly awarded four hours' compensation under §110(a) of the Federal Coal Mine Health and Safety act of 1969, since, even if miners had accepted alternative work for first four hours, alternative work was not available for final four hours.
		Remedial nature of Federal Coal Mine Health and Safety Act of 1969 requires that interest be paid on compensation awards to miners idled by withdrawal orders, even though 1969 Act does not expressly provide for interest.

Section of Act/Reg	Case Identification	Summary
69: 110(a)	PEABODY COAL COMPANY DENV 78-576-P March 7, 1979 ALJ - to be Amended 3/79 p79	
	PEABODY COAL COMPANY VINC 77-40 November 14, 1979 RC 11/79 p1785*	Miners prevented from working last hour of shift by withdrawal order issued under §104(a) of Federal Coal Mine Health and Safety Act of 1969 are entitled to compensation for one hour even though miners were idled for entire shift by §103(f) withdrawal order. Miners who worked first four and one-half hours of shift after withdrawal order was issued are entitled under §110(a) of Federal Coal Mine Health and Safety Act of 1969 to compensation for final three and one-half hours of shift. Federal Coal Mine Health and Safety Act of 1969 does not require that union, in applying for compensation for miners under §110(a), affirmatively show that all miners to whom compensation was due elected union to proceed on their behalf. Miners awarded compensation under §110(a) of Federal Coal Mine Health and Safety Act of 1969 are entitled to interest on award even though miner's representative failed to specifically request interest until its post-hearing brief was filed.
	WESTMORELAND COAL COMPANY HOPE 76-16 January 10, 1979 RC 3/79 p9*	Withdrawal order that was terminated at exact time of beginning of next working shift after shift during which order was issued was not terminated "prior to" such next working shift; accordingly, miners on next working shift are entitled to compensation under Section 110(a) of 1969 Act for actual time of idlement or four hours, whichever is less.

Section of Act/Reg	Case Identification	Summary
69: 110(a)	YOUNGSTOWN MINES CORPORATION HOPE 76-231 August 15, 1979 RC 8/79 p990*	Section 110(a) of Federal Coal Mine Health and Safety Act of 1969 requires operator to compensate miners idled for final four hours of shift when miners, pursuant to withdrawal order issued prior to shift, performed abatement work during first hours of shift and then were sent home.
69: 110(b)	ANSCHUTZ COAL CORPORATION DENV 76X-138 August 10, 1978 ALJ - Final Unbound	
	CHAROLAIS COAL CORPORATION BARB 78-66 October 16, 1979 ALJ - Final 10/79 p1614	
	CONSOLIDATION COAL COMPANY MORG 76X138 October 27, 1980 RC 10/80 p2812*	Operator's argument, that each miner who refused to ride allegedly unsafe elevator failed to notify Secretary of Interior, his authorized representative, or mine operator of alleged danger and that therefore miners were not protected under discrimination clause of 1969 Coal Act, is rejected and administrative law judge's determination that all miners communicated their fears over safety to mine operator by both words and deeds is upheld. Operator's argument, that miners who refused to ride allegedly unsafe elevator were not entitled to compensation under provisions of collective bargaining agreement because union safety committee declared mine an imminent danger, is rejected and judge's decision awarding miners compensation under discrimination clause of 1969 Coal Act is upheld, because judge rested decision on finding that benefits ordinarily conferred were withheld in retaliation, not that miners were entitled to compensation by their contract.

Section of Act/Reg	Case Identification	Summary
69: 110(b)	CONSOLIDATION COAL COMPANY MORG 77-20 May 8, 1979 RC - Appealed 5/79 p338*	Operator's requirement that miner obtain permission before leaving job to perform duties as safety committeeman and letters of reprimand for not obtaining permission constituted unlawful discrimination against miner because he engaged in activities protected by Section 110(b) of 1969 Act.
	CONSOLIDATION COAL COMPANY MORG 77-34 June 21, 1978 ALJ - Final Unbound	
	DESKINS BRANCH COAL COMPANY PIKE 76-66 October 23, 1980 RC 10/80 p2803*	While in non-union, lacking established procedures for reporting complaints, miner's notification to any mine official brings miner within protection of Section 110(b) of 1969 Act, record does not establish that discharged miners made safety complaint to foreman as alleged and judge's findings in favor of foreman and supervisor are upheld; accordingly, discharged miners failed to invoke protections of Section 110(b).
	JOHN MATALA MORG 76-53 April 5, 1979 RC - Appealed - Dismissed 4/79 P1*	In light of extensive provisions of Section 428 of Federal Coal Mine Health and Safety Act of 1969 for review of claims of discrimination by mine operators against miners suffering from pneumoconiosis, Federal Mine Safety and Health Review Commission will decline to exercise jurisdiction under general discrimination provision, Section 110(b) of 1969 Act, to review miner's claim that mine operator failed to maintain miner's rate of pay after transfer to less dusty area of mine, as required by Section 203(b)(3) of 1969 Act.
	MONTEREY COAL COMPANY VINC 78-38 April 3, 1979 ALJ - Review Granted 4/79 p69	

Section of Act/Reg	Case Identification	Summary
69: 110(b)	SMITTY BAKER COAL COMPANY, INC. MORT 71-96 December 4, 1980 RC 12/80 p3463*	Remedies in discrimination cases should be suited to individual facts of each case and designed to eliminate effects of illegal discrimination; accordingly, where general manager of coal company discriminated against miner in violation of Section 110(b) of 1969 Act and subsequently incorporated new mining company in different location, reinstatement of miner at new company, with such seniority and benefits as he would have had if illegal discrimination had not occurred, is appropriate remedy in order to fully compensate miner for effects of discrimination. Coal company, which purchased lease and equipment from operator that violated discrimination clause of 1969 Act and which reopened one of its mines, is jointly and severally liable, as successor, for illegal act of discrimination, where purchaser had sufficient notice of litigation, predecessor cannot provide complete relief, there was substantial continuity of business operations and purchaser operated substantial equivalent of predecessor's plant. Successor coal company is not liable for independent act of discrimination in violation of 1969 Act for alleged failure to hire miner, because miner did not file timely application for review with Secretary and miner only alleged in motion to add successor company as respondent in proceeding against predecessor operator that it was liable as successor for violation committed by predecessor.

Section of Act/Reg	Case Identification	Summary
69: 110(b)	SOUTH HOPKINS COAL COMPANY BARB 77-184 April 5, 1979 ALJ - Rev Dismissed/ Appealed 4/79 p126*	Employee's initiation of complaint concerning roof safety with his supervisor is sufficent to invoke §110(b) of Federal Coal Mine Health and Safety Act of 1969, whether or not employee intended complaint to reach federal official, since notification of foreman was recognized as first step in safety report or dispute procedure at mine, and it was most practical means of registering safety complaint in mine at that time. Legitimate safety dispute over roof condition is at issue although condition does not present immediate danger or constitute mandatory safety standard violation, and despite employee's reputation for excessive fear of top, his substandard work, and supervisor's personal examination of top early in shift, since roof in one area is rough, containing cracks up to an inch in depth, is warped and sagging, and presure on it is great enough to damage prop wedges. Employee's refusal to work under what he considered to be bad roof, when legitimate safety dispute was at issue, is protected activity under §110 of 1969 Act. Supervisor's statement that he had no other work for employee to do, inferring that employee would be sent home with loss of day's pay if he persisted in refusing to work under what he considered to be bad roof, and subsequent discharge, when legitmate safety dispute was at issue, are discriminatory acts improperly motivated by that refusal in violation of 1969 Act §110.

Section of Act/Reg	Case Identification	Summary
69: 110(b)		Employee found to have been discharged in violation of §110 (b) of 1969 Act is due relief including back pay, difference between income employee would have received had he continued working offset by income actually received in same period from other sources, interest on back pay, medical expenses, attoreny's fees, costs incurred by attorneys, and costs incurred directly by employee. Employee's failure to apply to Secretary for review of alleged discrimination within limitations period of 1969 Act §110(b) is justified since at time of discharge, employee was unaware of his rights under Act to challenge employer's action and was misled by Mining Enforcement and Safety Administration inspector as to existence of these rights.
	TEXAS UTILITIES GENERATING COMPANY CENT 79-93-D August 12, 1980 ALJ - Final 8/80 p2222*	Employee's contention that he was fired after having a finger amputated as result of job-related injury, that he was not given desk job, and that other employees who suffered injury and illness were given easier, better paying jobs by employer does not constitute allegation of discrimination against employee in violation of Section 110(b) of 1969 Act. Employee's failure to file complaint alleging discrimination until more than two years after alleged violation of Section 110(b) of 1969 Act and his failure to allege violation warrents dismissal of complaint despite refusal of nine lawyers to represent employee, because he knew all facts regarding discharge, could travel and use telephone, talked to lawyers, and was able to pursue other legal matters, and nature of his injuries, illnesses, and prescribed medication did not prevent timely filing of his complaint.

Section of Act/Reg	Case Identification	Summary
69: 110(b)(1)	L & M COAL CORPORATION NORT 75-377 October 27, 1980 RC - Appealed 10/80 p2815*	Miner's suspension and subsequent discharge for refusal to work because operator allegedly was not following approved roof control plan was violation of discrimination clause of 1969 Coal Act, because evidence established that miner's safety complaint to Mining Enforcement and Safety Administration and MESA inspection were motive for discharge and that miner had good faith belief that operator did not intend to follow approved roof control plan, even though inspection found that operator was in compliance. Judge's remedial order, requiring reinstatement, back pay, and attorneys' fees for miner who was discharged for engaging in activity protected by discrimination clause of 1969 Coal Act, is appropriate order of relief.
	SOUTHERN OHIO COAL COMPANY VINC 77-112 June 9, 1978 ALJ - Appealed - Remanded Unbound	
		Refusal of miners to cross large body of water which existed in route to their work-place because they believed it to be unsafe is protected by Section 110 of 1969 Coal Act and foreman's refusal to assign them alternate work violates Section 110 because foreman testified that reason he refused to assign alternate work was because of miners' refusal to cross water.
69: 110(b)(2)	CRESCENT COAL COMPANY PIKE 77-71 June 23, 1980 RC 6/80 p1202*	Judge's dismissal of miner's discrimination complaint as sanction for miner's failure to respond to prehearing order was error because of remedial purpose of 1969 Act and because of miner's difficulty in obtaining counsel.

Section of Act/Reg	Case Identification	Summary
69: 110(b)(2)	SOUTH HOPKINS COAL COMPANY BARB 77-184 April 5, 1979 ALJ - Rev Dismissed/ Appealed 4/79 p126*	Requirement under 1969 Act §110 (b)(2) that application to Secretary for review of alleged discrimination be made within thirty days of violation is in nature of statute of limitations, rather than jurisdictional requirement, and therefore can be tolled or extended upon showing of extenuating circumstances.
	YOUGHIOGHENY & OHIO COAL COMPANY VINC 78-463 February 23, 1979 RC - Denying Petition Unbound	
	YOUGHIOGHENY & OHIO COAL COMPANY VINC 78-463 January 16, 1979 ALJ- Appealed Unbound *	Thirty day filing period of Section 110(b)(2) of 1969 Act is jurisdictional, and not statute of limitations subject to tolling under circumstances advanced by Secretary and employee's failure to file his complaint within such period bars his complaint.
69: 110(b)(3)	F M V COAL CORPORATION HOPE 77-128 February 26, 1980 ALJ - Final 2/80 p575*	
69: 110(c)	LAUREL SHAFT CONSTRUCTION COMPANY, PITT 72-23 September 12, 1980 ALJ - Final 9/80 p2623*	Operator who is found to have illegally discharged employees in violation of Section 110(c) of Federal Coal Mine Health and Safety Act of 1969 cannot deduct unemployment compensation benefits received by employees during period in which damages occurred from amount of back pay owed to employees, because U.S. Supreme Court has held that state unemployment compensation benefits are not "earnings" to be deducted from back pay.
69: 202(a)	CONSOLIDATION COAL COMPANY CR-2-75-97 April 20, 1979 DISTRICT COURT N/A*	

Section of Act/Reg	Case Identification	Summary
69: 202(a)	EASTERN ASSOCIATED COAL CORPORATION HOPE 76-140 June 22, 1978 ALJ - Final Unbound*	
69: 202(e)	KANAWHA COAL COMPANY WEVA 80-150 June 27, 1980 ALJ - Review Granted 6/80 p1658	
	KANAWHA COAL COMPANY WEVA 80-40 June 24, 1980 ALJ - Review Granted 6/80 p1576	
69: 203(b)	UNITED STATES STEEL CORPORATION HOPE 79-246 May 2, 1979 ALJ - Final Unbound*	Failure to report retransfer of individual who was transferred to less dusty job pursuant to Section §203(b) of Federal Coal Mine Health and safety Act of 1969 due to evidence of pneumoconiosis, does not constitute violation of 30 CFR §90.040, since regulation refers only to initial transfer and does not cover subsequent transfers.
69: 203(b)(3)	HOWARD MULLINS 77-1086 December 31, 1980 US Appeals - DC Circuit N/A*	Secretary of Interior is authorized to enforce by notice of violation provisions of Section 203(b)(3) of 1969 Act regarding retention of rate of pay by miners transferred for having contracted pneumoconiosis. Phrase "regular rate of pay" in Section 203(b)(3) of 1969 Act means rate at which miner was actually and regularly compensated when transfer under such provision occurred; accordingly, Board erred in limiting miner to pay rate of his regular job classification when miner had been on temporary assignment at higher classification.
	JOHN MATALA 78-0035-W(H) February 13, 1980 DISTRICT COURT N/A*	Miner transferred to less dusty area of mine because of evidence of pneumoconiosis is entitled pursuant to 30 U.S.C. §843(b)(3) under 1969 Act to be compensated at same dollar rate - or at same classification rate - as he was immediately prior to his transfer.

Section of Act/Reg	Case Identification	Summary
69: 203(b)(3)	JOHN MATALA MORG 76-53 April 5, 1979 RC - Appealed - Dismissed 4/79 P1*	In light of extensive provisions of Section 428 of Federal Coal Mine Health and Safety Act of 1969 for review of claims of discrimination by mine operators against miners suffering from pneumoconiosis, Federal Mine Safety and Health Review Commission will decline to exercise jurisdiction over general discrimination provision, Section 110(b) of 1969 Act, to review miner's claim that mine operator failed to maintain miner's rate of pay after transfer to less dusty area of mine, as required by Section 203(b)(3) of 1969 Act.
69: 303(z)(2)	CHRISTOPHER COAL COMPANY MORG 76-8-P October 25, 1978 RC 3/79 P1*	
69: 318(k)	KANAWHA COAL COMPANY WEVA 80-150 June 27, 1980 ALJ - Review Granted 6/80 p1658	
	KANAWHA COAL COMPANY WEVA 80-40 June 24, 1980 ALJ - Review Granted 6/80 p1576	

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77: 3(d)	MONTEREY COAL COMPANY WEVA 80-64 March 31, 1980 ALJ - Final 3/80 p761	
	OLD BEN COAL COMPANY VINC 79-119-P April 27, 1979 ALJ - Review Granted 4/79 p271	

Section of Act/Reg	Case Identification	Summary
77: 3(d)	SWOPE COAL COMPANY HOPE 78-644-P August 27, 1979 ALJ - Appealed 8/79 p1067*	Lessor of mine is "operator" of mine under Federal Mine Safety and Health Act of 1977 and liable for violations of Act when lessor continues to exercise control over mine, helps the lessee with marketing of coal, provides lessee with mining equipment, and is named as operator in legal identity report filed with Secretary. Order of Federal Mine Safety and Health Review Commission holding that lessor-coal company was "operator" of coal mine within meaning of 1977 Act is supported by substantial evidence.
77: 3(e)	OLD BEN COAL COMPANY VINC 79-119-P October 29, 1979 RC - Appealed 10/79 p1480*	Owner-operator of mine can be held responsible under Federal Mine Safety and Health Act of 1977 for violations committed by independent contractor engaged by owner to perform work on owner's premises.
77: 3(g)	MAUMEE HAULERS & EXCAVATORS LAKE 80-192-M December 18, 1980 ALJ - Final 12/80 p3708*	Part-owner of family-owned and family-operated mine, who operates crane, is "miner" within meaning of Federal Mine Safety and Health Act since Act's definition of "miner" includes any individual working in mine, not just employees.
77: 3(h)	CEDAR LAKE SAND & GRAVEL COMPANY 79-C-181 November 9, 1979 DISTRICT COURT N/A*	Operator's sand and gravel operation is within coverage of 1977 Act since pit from which sand and gravel is removed falls squarely within definition of "mine" in Act.
	NOLICHUCKEY SAND COMPANY 79-1111 October 5, 1979 6th Cir Court - (NCO) N/A*	Warrant is not required for periodic inspection of "active workings" of sand and gravel "mines," in view of statistics showing extreme hazardousness of such mines and sufficient privacy guarantees in Federal Mine Safety and Health Act of 1977.

Section of Act/Reg	Case Identification	Summary
77: 3(h)	W F SAUNDERS & SONS YORK 79-58-M December 28, 1979 ALJ - Final 12/79 p2130*	Storeroom used to store parts for trucks that haul sand and gravel from pit to preparation plant comes within definition of "mine" in 1977 Act and is subject to inspections and citations for violations of Act, even though most of stored equipment is unrelated to preparation plant.
77: 3(h)(1)	ARIZONA CRUSHING COMPANY WEST 79-195-M December 24, 1980 ALJ - Final 12/80 p3736	
	CAROLINA STALITE COMPANY BARB 79-319-P April 14, 1980 ALJ - Final 12/80 p3519	
	CYPRUS INDUSTRIAL MINERALS COMPANY DENV 78-558-M August 3, 1978 ALJ - Review Granted in Part 12/79 p2069	
	DAN NEVILLE CENT 80-180-M December 11, 1980 ALJ - Final 12/80 p3586*	South Dakota mine operator who uses equipment manufactured in other states and sells product to company located in Minnesota has effect on interstate commerce and is subject to provisions of Federal Mine Safety and Health Act even though most of crushed product from mine is used in roads in state of South Dakota.
	ENERGY FUELS NUCLEAR, INC. DENV 78-434-M December 4, 1978 ALJ - Final Unbound*	Although no uranium has been extracted from previously abandoned uranium mine where operator conducts core drilling operations, intent of 1977 Act is to be broadly construed to apply to all of nation's mines as class of activities which affect commerce; accordingly, operations fall within class of activities covered by 1977 Act.

Section of Act/Reg	Case Identification	Summary
77: 3(h)(1)	READYMIX SAND & GRAVEL COMPANY WEST 79-66-M December 5, 1979 ALJ - Final 12/79 p1987*	Company that operates preparation plant that processes by crushing, screening, and washing, sand and gravel from nearby noncontiguous mining pit comes within coverage of 1977 Act.
	WALLACH CONCRETE PRODUCTS 79-422 March 5, 1980 DISTRICT COURT N/A*	Sand and gravel operations are "mines" within meaning of Section 3(h)(1) of Federal Mine Safety and Health Act of 1977, and accordingly are within coverage of Act.
	WAUKESHA LIME & STONE COMPANY VINC 79-66-PM June 5, 1979 ALJ - Review Granted 6/79 p512	
77: 3(j)	ITMANN COAL COMPANY WEVA 80-7-R June 26, 1980 ALJ - Final 6/80 p1643*	
77: 4	ENERGY FUELS NUCLEAR, INC. DENV 78-434-M December 4, 1978 ALJ - Final Unbound*	
77: 101(a)(4)(A)	NATIONAL INDUSTRIAL SAND ASSOCIATION 78-2446 May 16, 1979 3rd Cir Court (NCO) N/A*	
77: 101(d)	SEWELL COAL COMPANY WEVA 79-31 September 20, 1979 ALJ - Opinion 9/79 p1381	
77: 103	WAUKESHA LIME & STONE COMPANY 79-C-114 March 29, 1979 DISTRICT COURT N/A*	Federal Mine Safety and Health Act of 1977 does not permit Secretary of Labor to conduct warrantless inspection of stone quarry, in view of lack of history of federal regulation of stone quarry industry and Secretary's failure to describe any unusual circumstances in quarry business that necessitate warrantless inspections.

Section of Act/Reg	Case Identification	Summary
77: 103		Warrantless inspection of stone quarry is not constitutionally permissible under Federal Mine Safety and Health Act of 1977 because stone quarry industry does not have long tradition of government regulation. Secretary of Labor's motion for preliminary injunction compelling inspection of stone quarry is denied for failure to show reasonable likelihood of success on merits. Quarry operator's motion for preliminary injunction forbidding inspection of its premises is denied for lack of showing of irreparable harm, since Secretary of Labor has represented to court that warrantless inspection will not be pursued.
77: 103(a)	ALLIED CHEMICAL CORPORATION WEVA 79-148-D September 27, 1979 ALJ - Review Granted 9/79 p1451	
	ATLAS LAND COMPANY, INC. 79-391-B June 15, 1979 DISTRICT COURT N/A*	Secretary's application to enjoin operators from interfering with inspections conducted under the 1977 Act is denied because, since it is uncertain whether the sand and gravel business is subject to the kind of pervasive regulation that would allow warrantless inspections, the Secretary has not carried his burden of showing a likelihood of success on the merits. Operators' complaints charging that warrantless inspections of sand and gravel pits pursuant to 1977 Act are unconstitutional are dismissed since operators have not exhausted their administrative remedies; Federal Mine Safety and Health Review Commission, which has helpful expertise, is independent of Secretary of Labor, and constitutional adjudication would be avoided if it were to conclude that sand and gravel pits are not covered by Act.

Section of Act/Reg	Case Identification	Summary
77: 103(a)		Operator's application to enjoin inspectors from conducting further warrantless inspection of its sand and gravel operations is denied because, in light of Secretary's policy of not attempting additional warrantless inspections prior to termination of judicial proceedings, operators have not shown they will suffer any irreparable injury if their application is not granted.
	BAKER COAL COMPANY WEVA 80-284 September 16, 1980 ALJ - Final 9/80 p2626*	Operator violates Section 103(a) of Federal Mine Safety and Health Act of 1977 when it denies Mine Safety and Health Administration inspectors entry into its mine to conduct spot inspection; violation constitutes gross negligence because operator physically assaulted inspector, and violation is of serious gravity because it threatens to undermine integrity of mine safety enforcement; accordingly, substantial penalty of $8,000 is warranted.
	CLIMAX MOLYBDENUM COMPANY WEST 79-92-RM February 25, 1980 ALJ - Final 2/80 p542*	Refusal by mine operator to permit Mine Safety and Health Administration inspector to take photographic equipment on general inspection in order to document conditions and practices alleged to be violations at time of inspection, while not directly a refusal of right-of-entry, is violation of Sec. 103(a) of Federal Mine Safety and Health Act of 1977 because use of cameras by inspectors is extension of warrantless inspection authorized by Sec. 103(a) of Act.
	HALQUIST STONE COMPANY VINC 79-118-PM June 8, 1979 ALJ - Review Granted 6/79 p528	

Section of Act/Reg	Case Identification	Summary
77: 103(a)	HERB COAL COMPANY WILK 79-116-P November 20, 1980 ALJ - Final 11/80 p3374*	Operator may not deny entry to federal mine inspectors based on lack of search warrant because Section 103(a) of Federal Mine Safety and Health Act authorizes entry to secretary or authorized agents for purpose of making inspections; however, operator negligence is not established where denial of entry is based upon bona fide belief that operator had right to object to warrantless inspection.
	KNISELEY COAL COMPANY CA 80-139 March 14, 1980 DISTRICT COURT N/A*	Mine that is family-owned and family-operated is covered by provisions of Federal Mine Safety and Health Act of 1977 and is subject to federal safety inspections.
	MAGMA COPPER COMPANY DENV 78-533-M December 10, 1979 RC - Appealed 12/79 p1948*	One miners' representative in each inspection party must be paid for time spent accompanying inspector who is engaged in inspection of mine under §103(a) of 1977 Act, since limitation of walkaround pay to only one miners' representative regardless of number of inspection parties would frustrate Congressional purpose of improving thoroughness of mine inspection and level of miner safety consciousness.
	NOLICHUCKEY SAND COMPANY 79-1111 October 5, 1979 6th Cir Court - (NCO) N/A*	Warrant is not required for periodic inspection of "active workings" of sand and gravel "mines," in view of statistics showing extreme hazardousness of such mines and sufficient privacy guarantees in Federal Mine Safety and Health Act of 1977.

Section of Act/Reg	Case Identification	Summary
77: 103(a)	PATCO, INC. KENT 80-34 September 26, 1980 ALJ - Final 9/80 p2711*	Citation issued against operator for violating Section 103(a) of Federal Mine Safety and Health Act of 1977 because alleged agent of operator denied entry to Mine Safety and Health Administration inspector must be vacated when evidence established that alleged agent was no longer employed by operator, had never acted in management capacity, had never been authorized to act for operator, and operator did not ratify unauthorized acts of alleged agent.
	READYMIX SAND & GRAVEL COMPANY WEST 79-66-M December 5, 1979 ALJ - Final 12/79 p1987*	Refusal by operator to permit MSHA inspector on premises of crushing and cleaning plant for purpose of performing inspection pursuant to 1977 Act constitues violation of §103(a) of Act.
	ROSE COAL COMPANY LAKE 79-94 May 30, 1980 ALJ - Final 6/80 p1289*	Miner owner violated authorized representative of Secretary of Labor right of entry into its mine as there is no provision in law permitting mine owners to decide which inspectors can enter upon their property and which inspectors cannot.
	ROSE GRAVEL COMPANY 79-727 November 28, 1979 DISTRICT COURT (NCO) N/A*	
		Warrantless inspections of sand and gravel operations under Federal Mine Safety and Health Act of 1977 meet standards of reasonableness and pervasiveness of regulation of particular industry set forth by U.S. Supreme Court in Marshall V. Barlow's, Inc. , 436 US 307(1978), and accordingly are consistent with Fourth Amendment to U.S. Constitution.

Section of Act/Reg	Case Identification	Summary
77: 103(a)	STOUDT'S FERRY PREPARATION COMPANY 78-2364 July 19, 1979 3rd Cir Court Appealed N/A*	Warrantless inspections under Mine Act withstand constitutional challenge since mining industry is pervasively regulated and Mine Act inspection provision places limitations on use of inspection and is more narrowly drawn than comparable Occupational Safety and Health Act provision.
	SUMMITVILLE TILES, INC. VINC 79-213-PM March 19, 1980 ALJ - Final 3/80 p740*	It is immaterial whether MSHA inspector obtained knowing consent of operator of clay pit and processing plant before making inspection since warrantless nonconsensual inspections of such facilities are constitutionally permissible.
	WALLACH CONCRETE PRODUCTS 79-422 March 5, 1980 DISTRICT COURT N/A*	Warrantless inspections of sand and gravel operations under Federal Mine Safety and Health Act of 1977 meet standards of reasonableness and pervasiveness of regulation of particular industry set forth by U.S. Supreme Court in Marshall V. Barlow's, Inc. , 436 US 307 (1978), and accordingly are consistent with Fourth Amendment to U.S. Constitution.
	WAUKESHA LIME & STONE COMPANY 79-C-114 May 30, 1979 DISTRICT COURT N/A*	Lack of comprehensive federal regulation of stone quarry industry prior to 1966 precludes finding that industry has history of pervasive regulation such that warrantless inspections are permissible.
	WAUKESHA LIME & STONE COMPANY VINC 79-66-PM June 5, 1979 ALJ - Review Granted 6/79 p512	
77: 103(f)	ALABAMA BY-PRODUCTS CORPORATION SE 80-41-R February 14, 1980 ALJ - Review Granted/ Vacated 2/80 p467*	Mine operator is not required under §103(f) of Federal Mine Safety and Health Act of 1977 to pay miners' representatives for time they spend accompanying 12 mine inspectors during "blitz" inspection of mine.

Section of Act/Reg	Case Identification	Summary
77: 103(f)	ALLIED CHEMICAL CORPORATION WEVA 79-148-D September 27, 1979 ALJ - Review Granted 9/79 p1451	
	BISHOP COAL COMPANY HOPE 79-241 May 30, 1980 ALJ - Final 6/80 p1296*	Operator's notification of miners' representative of impending inspection of mine does not satisfy provisions of §103(f) of Federal Mine Safety and Health Act of 1977 if representative is committed to accompanying another inspector, because notification alone does not meet requirements of Act as representative must be given opportunity to accompany inspector on inspection. Inspector's arrival at mine after miners had gone underground does not provide valid excuse for operator's failure to afford miners' representaative opportunity to accompany inspector, as there is no requirement in §103(a) of Federal Mine Safety and Health Act of 1977 that inspector appear at mine at any specific time.
	BISHOP COAL COMPANY WEVA 80-429-D August 7, 1980 ALJ - Review Denied/ Appealed 8/80 p2160*	According to existing precedent of Federal Mine Safety and Health Review Commission, miners' representatives are not entitled to be compensated for time spent on walkaround during course of spot inspection, and fact that rulings have been appealed to courts is no basis for staying proceedings; operator is entitled to summary decision as matter of law when miners file complaint of discrimination for operator's refusal to pay representatives for time spent on spot inspections.

Section of Act/Reg	Case Identification	Summary
77: 103(f)	CONSOLIDATION COAL COMPANY LAKE 80-78-D May 5, 1980 ALJ - Final 5/80 p1056*	Miner who participates as miners' representative in walkaround activities with MSHA inspector is entitled to compensation for work he would have performed during time inspection was conducted so that if miner was to be engaged in special work that pays higher rate than general work, he must be compensated at higher rate even if work was never performed, since miners' representative must not suffer loss of pay during participation in inspection according to section 103(f) and 105 of Federal Mine Safety and Health Act of 1977.
	EASTOVER MINING COMPANY VA 80-31 March 19, 1980 ALJ - Final 3/80 p736	
	IDEAL CEMENT COMPANY BARB 79-61-PM October 3, 1979 ALJ - Final 10/79 p1506*	Operator's representative was not denied right under §103(f) of 1977 Act to accompany inspector on inspection of mine even though representative was not present when citation was issued since representative knew of inspector's presence at mine, inspector did not intentionally elude foreman, and inspector discussed citation with representative after it was issued.
	ISLAND CREEK COAL COMPANY KENT 79-216-R July 30, 1980 ALJ - Review Denied/ Appealed 7/80 p1983*	Citations for violations of Section 103(f) of Federal Mine Safety and Health Act, based on operator's refusal to compensate miners' representatives for accompanying inspectors on "spot" inspections, are vacated because Review Commission has held that "walkaround" pay provision only applies to required annual "regular" inspections.
	ISLAND CREEK COAL COMPANY VA 79-61-R June 3, 1980 ALJ - Review Denied/ Appealed 6/80 p1325*	

Section of Act/Reg	Case Identification	Summary
77: 103(f)	ISLAND CREEK COAL COMPANY VA 79-62-R June 3, 1980 ALJ - Final 6/80 p1325	
	ISLAND CREEK COAL COMPANY VA 79-74-R September 11, 1980 ALJ - Review Denied/ Appealed 9/80 p2583	
	ISLAND CREEK COAL COMPANY WEVA 79-242-R April 22, 1980 ALJ - Review Denied/ Appealed 4/80 p942	
	JEWELL RIDGE COAL CORPORATION VA 79-78 September 11, 1980 ALJ - Final 9/80 p2578*	Provisions of Section 103(f) of Federal Mine Safety and Health Act of 1977 require operator to compensate miners' representative who accompanies inspector on regular inspection of mine, and fact that operator paid representative who accompanied inspector who was making "spot" inspection of same mine on same day is immaterial to operator's obligation to compensate under Section 103(f).
	KENTLAND-ELKHORN COAL CORPORATION PIKE 78-399 November 30, 1979 RC - Appealed 11/79 p1833*	Judge's decision that right of miners' representative to walkaround pay granted by §103(f) of 1977 Act does not extend to specialized electrical inspections is affirmed since Act standing alone is ambiguous on that issue and statment of Representative in legislative history clearly evidences intention of Congress to limit walkaround pay to regular inspections.
	LESLIE COAL MINING COMPANY PIKE 78-400 December 12, 1979 ALJ - Final 12/79 p2022*	Company's refusal to allow miners' representative to accompany MSHA inspectors on inspection because representative had been suspended from work on day of inspection constituted violation of §103(f) of 1977 Act.

Section of Act/Reg	Case Identification	Summary
77: 103(f)	MAGMA COPPER COMPANY DENV 78-533-M March 8, 1979 ALJ - Appealed 3/79 p81	
	NATIONAL MINES CORPORATION KENT 80-130-R September 11, 1980 ALj - Review Denied/ Appealed 9/80 p2576	
	PRINCESS SUSAN COAL COMPANY WEVA 79-423-R March 7, 1980 ALJ - Granted/Vacated/ Appealed 3/80 p669*	Miners' representative who accompanied inspector on "free silica technical investigation" is not entitled to be compensated by operator under Sec. 103(f) of Federal Mine Safety and Health Act of 1977 for time spent accompanying inspector because technical investigation is not Sec. 103(a) "regular" inspection carrying compensation rights.
	RANGER FUEL CORPORATION WEVA 79-217-R September 23, 1980 ALJ - Appealed 9/80 p2675	
	RANGER FUEL CORPORATION WEVA 80-121 April 29, 1980 ALJ - Final 4/80 p985	
	ST. JOE ZINC COMPANY YORK 80-86-DM October 28, 1980 ALJ - Final 12/80 p3594	
	TEXAS UTILITIES GENERATING COMPANY DENV 79-181-P August 27, 1980 ALJ - Final 8/80 p2413*	Operator violates provision of Section 103(f) of Federal Mine Safety and Health Act of 1977 when its agent refuses union steward opportunity to accompany inspector during physical inspection of mine, although steward had not met filing requirements of Act to qualify as miners' representative, because failure to meet filing requirements should not be permitted to serve as basis for denial of Section 103(f) representative status.

Section of Act/Reg	Case Identification	Summary
77: 103(f)	THE HELEN MINING COMPANY PITT 79-11-P April 11, 1979 ALJ - Review Granted 4/79 p219	
	THE HELEN MINING COMPANY PITT 79-11-P March 21, 1980 RC - Deny Motion to Stay Not Printed *	Mine Workers' motion for order staying effect of Review Commission's decisions limiting rights to walkaround pay for miner participants in mine inspections pending appeal is denied, since union failed to show irreparability of injury to miners and to grant stay would be in derogation of Commission's statutory function of making uniform national policy.
	VIRGINIA POCAHONTAS COMPANY VA 79-131-R September 11, 1980 ALJ - Rev Denied/ Appealed 9/80 p2586	
77: 103(g)	CONSOLIDATION COAL COMPANY WEVA 80-333-R June 12, 1980 ALJ - Ruling - Review Granted 6/80 p1403	
	SOUTHERN OHIO COAL COMPANY LAKE 79-24 January 31, 1980 ALJ - Final 1/80 p270*	Failure of inspector to furnish to operator copy of miner's request for special inspection under §103(g) of 1977 Act does not render search illegal or citations issued pursuant to search invalid because purpose of requirement that copy be furnished to operator is only to notify operator that miner is engaged in protected activity.
77: 103(g)(1)	PENNSYLVANIA GLASS SAND CORPORATION BARB 79-108-PM August 29, 1979 ALJ - Final 8/79 p1191*	Although Sections 103(g)(1) and (2) of 1977 Act authorize representative of miners to bring to attention of inspector existing condition which he believes constitutes violation, Act does not authorize inspector to base citation on past condition or practice orally brought to his attention by miner representative.

Section of Act/Reg	Case Identification	Summary
77: 103(g)(1)	WHITE PINE COPPER, DIVISION OF COPPER MINE LAKE 79-223-RM February 4, 1980 ALJ - Review Denied 2/80 p288*	Requirement that company furnish data to MSHA to prove efficacy of its ground support methods does not constitute irreparable injury or deprivation of company's property without due process of law because 1977 Act provides for expedited hearing on validity of citation or closure order.
77: 103(i)	ALLIED CHEMICAL CORPORATION WEVA 79-148-D December 6, 1979 RC - Dismissed/Appealed 12/79 p1947	
	ISLAND CREEK COAL COMPANY KENT 80-22-D January 24, 1980 ALJ - Review Denied/ Appealed 1/80 p93	
	ISLAND CREEK COAL COMPANY VA 79-61-R June 3, 1980 ALJ - Review Denied/ Appealed 6/80 p1325*	
	ISLAND CREEK COAL COMPANY VA 79-62-R June 3, 1980 ALJ - Final 6/80 p1325	
	THE HELEN MINING COMPANY PITT 79-11-P November 21, 1979 RC - Appealed 11/79 p1796*	Mine operator is not required to pay miners' representative for time he spends accompanying mine inspector during "spot" inspection required by §103(i) of 1977 Act, since legislative history of Act indicates that that was intention of Congress.
77: 103(k)	EASTERN ASSOCIATED COAL CORPORATION WEVA 80-473 November 26, 1980 ALJ - Review Granted 11/80 p3422	

Section of Act/Reg	Case Identification	Summary
77: 103(k)	ITMANN COAL COMPANY WEVA 79-119-R October 10, 1979 ALJ - Final 10/79 p1573*	Imminent danger withdrawal order under §107(a) of 1977 Act is valid even though §103(k) control order is in effect at mine, since purpose of imminent danger withdrawal order is not only to withdraw miners but to insure that they remain withdrawn until imminent danger has been eliminated.
77: 104	ROCHESTER & PITTSBURGH COAL COMPANY PITT 77-100 January 5, 1979 ALJ - Final Unbound*	
77: 104(a)	AMAX CHEMICAL CORPORATION DENV 78-426-M August 28, 1978 ALJ - Final Unbound	
	BURGESS MINING & CONSTRUCTION SE 79-42 December 10, 1979 ALJ - Review Granted 12/79 p2038	
	CEDAR LAKE SAND & GRAVEL COMPANY 79-C-181 November 9, 1979 DISTRICT COURT N/A*	Warrantless inspections under 1977 Act withstand constitutionality challenge since mining industry is pervasively regulated and 1977 Act inspection provision places limitations on use of inspection and is more narrowly drawn than comparable OSHA provision.
	CEMENT DIVISION, NATIONAL GYPSUM COMPANY VINC 79-154-PM December 26, 1979 ALJ - Review Granted 12/79 p2115	
	HELVETIA COAL COMPANY PITT 78-322 May 1, 1979 RC - Reverse & Remand 5/79 p321*	Federal Mine Safety and Health Review Commission has jurisdiction under Federal Mine Safety and Health Act of 1977 to review, prior to proposal of penalties by Secretary of Labor, citation issued under Section 104(a) of Act, even though alleged violation has been abated by mine operator.

Section of Act/Reg	Case Identification	Summary
77: 104(a)	ITMANN COAL COMPANY HOPE 78-690-P December 5, 1979 ALJ - Final 12/79 p2134	
	MABEN ENERGY CORPORATION WEVA 79-123-R November 30, 1979 ALJ - Review Granted 11/79 p1942	
	SUNBEAM COAL CORPORATION PITT 79-210 January 29, 1980 ALJ - Review Denied 1/80 p192*	Operator is entitled to review of §104(a) violation and inspector's additional finding of "significant and substantial" even though citations were abated, because operator is vulnerable pursuant to §104(e) to withdrawal order resulting from finding of pattern of "significant and substantial" violations. All violations of mandatory standards under 1977 Act are "significant and substantial" except those violations which pose no risk of injury to all or those violations that pose source of injury that has only speculative chance of happening.
	VAN MULVEHILL COAL COMPANY, INC. SE 79-127 February 25, 1980 RC - Reverse & Remand 2/80 p283*	In considering combined citation and withdrawal order under § §104(a) and 107(a) of 1977 Act, judge's dismissal of citations because withdrawal order had been vacated is reversed since allegation of violation survives vacation of order it is contained in, and, if proven, assessment of penalty is required.
77: 104(b)	ALABAMA BY-PRODUCTS CORP BARB 78-512 November 1, 1978 ALJ - Final Unbound	
	ALABAMA BY-PRODUCTS CORPORATION BARB 78-512 November 1, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
77: 104(b)	BISHOP COAL COMPANY HOPE 79-241 May 30, 1980 ALJ - Final 6/80 p1296*	
	CLEVELAND CLIFFS IRON COMPANY VINC 79-68-M December 3, 1979 ALJ - Review Granted 12/79 p1965	
	CLIMAX MOLYBDENUM COMPANY WEST 79-92-RM February 25, 1980 ALJ - Final 2/80 p542*	
	CLINCHFIELD COAL COMPANY VA 79-98-R October 23, 1980 ALJ - Review Denied 10/80 p3109	
	CONSOLIDATION COAL COMPANY MORG 77-56 December 6, 1978 ALJ - Review Denied Unbound	
	CONSOLIDATION COAL COMPANY WEVA 79-171-R October 19, 1979 ALJ - Final 10/79 p1638*	Withdrawal order issued under §104(b) of 1977 Act for failure to correct improper gauge between rails of main haulage track is vacated since, in view of substantial work done to abate condition and fact that work was continuing, period of time for abatement should have been further extended.
	CONSOLIDATION COAL COMPANY WEVA 80-116-R October 7, 1980 ALJ - Review Denied/ Appealed 10/80 p2862*	Inspector's issuance of withdrawal order under Section 104(b) of 1977 Act for failure to abate violation of approved roof control plan and his refusal to extend abatement period is proper where he determined that only 15 roof bolts had been installed to correct 150 wide spaced bolts and that abatement work had been performed only during one shift after issuance of citation.

Section of Act/Reg	Case Identification	Summary
77: 104(b)		Inspector erred in issuing withdrawal order under Section 104 (b) of 1977 Act for failure to abate violation of roof control plan and in refusing to extend abatement period where operator introduced documentary evidence to show that it had installed more than 400 roof bolts in cited area before termination of abatement period and inspector had cited only 350 roof bolts in violation of plan.
	DAVID CABRERA, INC. SE 79-2-M February 8, 1980 ALJ - Final 2/80 p343	
	ENERGY FUELS NUCLEAR, INC. DENV 78-434-M December 4, 1978 ALJ - Final Unbound*	Core drilling operations at previously abandoned uranium mine, sole objective of which to reach potential uranium ore body, are akin to normal mine development work and constitute mining activities which Congress intended to regulate under 1977 Act. Inspector has discretion to extend time for compliance with 30 CFR 57. 11-58 beyond two-day abatement period and additional six days where inspector did not finally advise operator as to specific requirements for acceptable check-in and check-out system until withdrawal order was issued and second inspector believed violation was technical and would not contribute to mine accident or hazard; accordingly, withdrawal order issued under section 104(b) of 1977 Act for failure to abate violation within time fixed is vacated.
	FAULKNER COAL & LEASING KENT 79-146 February 12, 1980 ALJ - Final 3/80 p680	

Section of Act/Reg	Case Identification	Summary
77: 104(b)	ITMANN COAL COMPANY HOPE 79-307 February 26, 1980 ALJ - Final 2/80 p591*	Inspector reasonably refused to extend time allowed for abatement of violation of 30 CFR §75.1103-4(a) requirement that automatic fire sensor and warning device system be equipped with sensor within each belt flight because operator did not make reasonable effort to place necessary sensor as evidenced by failure to adequately supervise employee's abatement efforts, even though necessary equipment was available and time allotted for abatement was ample.
	KENTLAND-ELKHORN COAL CORPORATION PIKE 78-399 March 8, 1979 ALJ - Review Granted 3/79 p89	
	KERR COAL COMPANY DENV 78-507 April 3, 1979 ALJ - Final 4/79 p84	
	MAGMA COPPER COMPANY DENV 78-533-M March 8, 1979 ALJ - Appealed 3/79 p81	
	MCCOY ELKHORN COAL CORPORATION KENT 80-243-R October 31, 1980 ALJ - Final 10/80 p3196*	Inspector acted reasonably in issuing withdrawal order under Section 104(b) of 1977 Act for failure to abate violation of accumulation standard, 30 CFR 74.400, instead of extending time for compliance because safety director and section foreman thought machine was "okay", did not offer to have additional cleaning done, did not explain why machine had not been properly cleaned, and did not ask for extension of time to perform additional cleaning.
	RAVEN MINING COMPANY NORT 79-78 January 23, 1980 ALJ - Final 1/80 p82*	Operator is entitled to independent review of validity and propriety of closure order issued under §104(b) of 1977 Act for failure to abate violative condition, despite failure to contest initial proposed civil penalty assessment.

Section of Act/Reg	Case Identification	Summary
.77: 104(b)	REPUBLIC STEEL CORPORATION PENN 80-56-R October 9, 1980 RC - Vacating & Remanding 10/80 p2772*	Judge erred in dismissing without prejudice operator's contest of two Section 104(b) withdrawal orders until associated penalty proceedings arose because as set forth in Eastern Associated Coal Corporation [2 MSHC 1011] continuance, rather than dismissal without prejudice, is proper procedural device for postponing adjudication of contest of withdrawal order when, as here, postponement is warranted.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
	UNITED STATES STEEL CORPORATION BARB 79-37 January 9, 1979 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION HOPE 79-121 May 2, 1979 ALJ - Final 5/79 p353	
	UNITED STATES STEEL CORPORATION WEVA 79-172-R June 19, 1980 ALJ - Final 6/80 p1515*	Issuance of withdrawal order for failure to abate violation of 30 CFR §75.1722 (guarding exposed moving machine parts) is justified when evidence shows that violation could have abated within specified time because one portion of violation was abated 20 minutes after order was issued, and inadequate guarding had been installed at another cited location.

Section of Act/Reg	Case Identification	Summary
77: 104(b)	UNITED STATES STEEL CORPORATION WEVA 80-54-R April 8, 1980 ALJ - Final 4/80 p832*	Withdrawal order issued pursuant to Section 104(b) of Federal Mine Safety and Health Act of 1977 is justified when in setting reasonable time for abatement of violation, inspector considers area involved, availability of materials, work involved, and available manpower required and operator is not diligent in achieving abatement within this time.
	WINDSOR POWER HOUSE COAL COMPANY WEVA 79-193-R March 10, 1980 ALJ - Review Denied 3/80 p671*	Area where actual mining was temporarily halted by mechanical breakdown is "working face" within meaning of Federal Mine Safety and Health Act of 1977 and operator's failure to take air readings in area, as required by operator's methane and dust control plan for all working faces, constituted violation of 30 CFR §75.316.
77: 104(b)(1)	ENERGY FUELS CORPORATION DENV 78-410 May 1, 1979 RC - Reverse & Remand 5/79 p299*	Federal Mine Safety and Health Review Commission has jurisdiction under Federal Mine Safety and Health Act of 1977 to review, prior to proposal of penalties by Secretary of Labor, citation containing special findings of unwarrantable failure under Section 104(b)(1) of Act, even though alleged violations have been abated by mine operator.
77: 104(c)(1)	PEABODY COAL COMPANY VINC 77-91 May 5, 1978 ALJ - Review Granted Unbound	
77: 104(c)(2)	WOLF CREEK COLLIERIES COMPANY PIKE 78-70-P September 21, 1978 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
77: 104(d)	C C C POMPEY COAL COMPANY, INC. PIKE 79-125-P September 3, 1980 ALJ - Final on Remand 9/80 p2512*	Violation of 30 CFR 75.400 is serious and associated with high degree of negligence where oil and float coal dust are allowed to accumulate to depth of from one-eighth inch to one inch on and around electrical components of S and S Scoop since accumulations are caked in form which show that they existed more than two days prior to writing of unwarrantable failure order under Section 104(d) of 1977 Act.
	CONSOLIDATION COAL COMPANY MORG 78-29 December 15, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-331 October 20, 1978 ALJ - Final Unbound	
	DUQUESNE LIGHT COMPANY PITT 79-32 January 19, 1979 ALJ - Final Unbound	
	KANAWHA COAL COMPANY HOPE 79-66 January 24, 1979 ALJ - Final Unbound	
	PETER WHITE COAL MINING CORPORATION HOPE 78-444 May 2, 1979 RC - Reverse & Remand 5/79 p330	
	PETER WHITE COAL MINING CORPORATION HOPE 78-554 October 16, 1979 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
77: 104(d)(1)	BETHLEHEM MINES CORPORATION PENN 80-52-R September 10, 1980 ALJ - Final 9/80 p2564*	Operator cannot escape finding of unwarrantable failure under Section 104(d)(1) of Act by establishing that section foreman, in whose presence violation occurred, did not know that violative condition constituted violation of law; operators are chargeable with knowledge of law and test for unwarrantability includes conditions operator knew or should have known existed. Violation of 30 CFR 75.1726(a) is caused by operator's unwarrantable failure to comply under Section 104(d)(1) of Act where section foreman should have known that working on raised portion of mobile equipment which was not blocked securely in place was violation of standard, section foreman was present when violation occurred and failed to exercise reasonable care and due diligence to abate violation, and violation could significantly and substantially contribute to cause and effect of mine safety and health hazard.
	CLIMAX MOLYBDENUM COMPANY DENV 79-300-M April 4, 1979 ALJ - Final 4/79 p87	
	CLIMAX MOLYBDENUM COMPANY WEST 79-325-RM February 19, 1980 ALJ - Final 2/80 p470*	Facts that truck driver had no trouble with braking systems on haulage rig on previous shift, that dynamic braking system must have been working when rig negotiated curve before accident occurred, and skid marks indicated heavy use of mechanical braking system, warrant vacation of citation alleging operator's unwarrantable failure to maintain brakes.
	CONSOLIDATION COAL COMPANY MORG 78-337 December 14, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
77: 104(d)(1)	CONSOLIDATION COAL COMPANY MORG 78-344 October 27, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY PENN 79-72-R October 25, 1979 ALJ - Final 10/79 p1689*	Imminent danger withdrawal order issued because roof crack and fallen rock existed over large area of mine is vacated since crucial issue in finding of imminent danger is not size of area involved, but whether there is time for abatement of condition before reasonable chance of death or serious injury.
	CONSOLIDATION COAL COMPANY PENN 80-254-R September 22, 1980 ALJ - Final 9/80 p2665	
	CONSOLIDATION COAL COMPANY WEVA 80-116-R October 7, 1980 ALJ - Review Denied/ Appealed 10/80 p2862*	Operator's contest of citation issued under Section 104(d)(1) of 1977 Act for operator's unwarrantable failure to comply with its roof control plan is justified where evidence showed that 350 wide spaced bolts had been installed for at least six months and operator knew or should have known of condition and possibility of roof fall injury was neither remote nor speculative.
	CONSOLIDATION COAL COMPANY WEVA 80-224-R September 19, 1980 ALJ - Final 9/80 p2647*	Violation of accumulation standard 30 CFR 75.400 justifies issuance of citation under Section 104(d)(1) of 1977 Act because of operator's unwarrantable failure to comply with mandatory standard where evidence establishes that coal accumulations were present for more than one working shift before citation was issued showing that operator knew or should have known of accumulation and failed to exercise reasonable care to abate condition and where testimony established that accumulations created potential hazard of fire and explosion.

Section of Act/Reg	Case Identification	Summary
77: 104(d)(1)	EASTERN ASSOCIATED COAL CORPORATION WEVA 79-117-R October 9, 1980 RC - Reversing & Remanding 10/80 p2774*	Judge erred in dismissing without prejudice operator's notice of contest to terminated Section 104 (d)(1) withdrawal order, because judge's order to show cause why contest should not be stayed until associated penalty contest arose mentioned only stay and not dismissal; additionally, as matter of Commission policy, stay, rather than dismissal without prejudice, is appropriate procedural device for postponing adjudication of contest of withdrawal order, when postponment is warranted. Stay of proceeding, in which operator is contesting terminated Section 104(d)(1) withdrawal order, until associated penalty proceeding arises is inappropriate because operator remains subject to sanctions of additional withdrawal orders under Sections 104(d) and (e), and judge erred in requiring operator to show "urgent need" in order to receive prompt hearing.
	ISLAND CREEK COAL COMPANY KENT 79-129 February 25, 1980 RC - Reverse & Remand 2/80 p279*	In considering withdrawal order, judge's dismissal of underlying citation because withdrawal order was vacated is reversed since allegation of violation survives vacation of order it is contained in, and, if proven, assessment of penalty is required.
	ITMANN COAL COMPANY HOPE 78-347 October 12, 1979 ALJ - Final 10/79 p1591*	Inspector correctly issued citation under §104(d)(1) of 1977 Act for unwarrantable failure to comply with 30 CFR §75.200, since operator knew about cracked roof before mining commenced and chose to add posts for support, which would leave room for mining machine, rather than to add cross-bars or roof bolts, which would have provided adequate additional support, as required by approved roof control plan.

Section of Act/Reg	Case Identification	Summary
77: 104(d)(1)		Inspector correctly issued withdrawal order under § 104(d) (1) of 1977 Act for unwarrantable failure to comply with 30 CFR §75.400, since float coal dust up to nine inches thick accumulated along distance of 250 feet for period of at least one week and covered electric motors and cables.
	MONTEREY COAL COMPANY HOPE 78-469 February 15, 1979 ALJ - Review Granted Unbound	
	PEABODY COAL COMPANY CENT 79-335-R March 7, 1980 ALJ - Final 3/80 p659*	
	PETER WHITE COAL MINING CORPORATION HOPE 78-463 July 21, 1978 ALJ - Final Unbound	
	PONTIKI COAL CORPORATION KENT 79-115-R February 11, 1980 ALJ - Final 2/80 p370*	Form 7000-3 is sufficiently specific to comply with finding requirement of §104(d)(1) when citing violation caused by unwarrantable failure to comply because violation described on front of form is clearly associated with unwarrantable failure by information given on back of form.
	THE NORTH AMERICAN COAL CORPORATION VINC 78-377 October 20, 1978 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION WEVA 79-343-R June 25, 1980 ALJ - Final 6/80 p1631*	

Section of Act/Reg	Case Identification	Summary
77: 104(d)(1)	WINDSOR POWER HOUSE COAL COMPANY WEVA 79-199-R July 3, 1980 ALJ - Final 7/80 p1739*	In proceeding to review withdrawal order issued under Section 104(d)(1) of 1977 Act, Commission lacks authority to review underlying Section 104(d)(1) citation solely as incident to review of related withdrawal order. In proceeding to review withdrawal order issued under Section 104(d)(1) of 1977 Act, waiver by Secretary and mine operator of formalities involved in bringing civil penalty proceedings confers jurisdiction to review existence of violation alleged in underlying Section 104(d)(1) citation, but not to review citation's "significant and substantial" and "unwarrantable failure" findings.
77: 104(d)(2)	CONSOLIDATION COAL COMPANY MORG 79-70 June 15, 1979 ALJ - Final 6/79 p542*	Fact that roof support violations existed for several days justifies finding of knowledge of violations on part of mine operator and of unwarrantable failure to comply with 30 CFR §75.200, and supports issuance of withdrawal order under Section 104(d)(2) of 1977 Act. Operator's assertion that roof control violations were not correct because section was idle and miners were on vacation demonstrates operator's knowledge and unwarrantable failure. Beginning abatement of roof support violations several hours before issuance of order of unwarrantable failure does
	CONSOLIDATION COAL COMPANY PITT 79-161 April 12, 1979 ALJ - Final 4/79 p226*	Unwarrantable failure under §104(d)(2) of Federal Mine Safety and Health Act of 1977 exists where longwall mining has been going on for 10 days before issuance of §104(d)(2) withdrawal order, evidence shows without dispute that for these 10 days a battery charger with transformer was in prohibited location in violation of 30 CFR §75.1002, and operator, through its management personnel, knew of situation during entire period.

Section of Act/Reg	Case Identification	Summary
77: 104(d)(2)	CONSOLIDATION COAL COMPANY PITT 79-168 June 15, 1979 ALJ - Final 6/79 p538	
	CONSOLIDATION COAL COMPANY WEVA 79-115-R November 28, 1980 ALJ - Final 11/80 p3426	
	ITMANN COAL COMPANY WEVA 80-8-R August 11, 1980 ALJ - Final 8/80 p2193*	"Similar violation" is violation of any mandatory health or safety standard which is caused by unwarrantable failure of operator to comply; failure to establish intervening inspection between issuance of withdrawal order under Section 104(d)(1) of 1977 Act on March 14, 1979 and issuance of Section 104(d)(2) withdrawal order after inspection on September 5, 1979, which discloses no similar violations, does not break chain of orders; accordingly, Section 104(d)(2) withdrawal order is valid. Unwarrantable failure of operator to comply with 30 CFR 75.400 justifies issuance of withdrawal order under Section 104(d)(2) of 1977 Act where operator knew or should have known of existence of hydraulic oil accumulation in car haul area, area had been cited less than one month previously for same condition, and operator's witnesses concede there was more hydraulic oil in this area than was normal, even if operator correctly asserts that oil spillage occurred on previous shift.

Section of Act/Reg	Case Identification	Summary
77: 104(d)(2)	OLD BEN COAL COMPANY VINC 74-11 December 12, 1979 RC - Reverse & Reinstate 12/79 p1954*	It is unnecessary for Review Commission to review conclusion of Interior Board of Mine Operation Appeals that violative conditions did not significantly and substantially contribute to cause of safety hazard since "significant and substantial" finding is not required for issuance of unwarrantable failure withdrawal order under section 104 (d)(2) of 1977 Act.
	QUARTO MINING COMPANY LAKE 80-44-R April 18, 1980 ALJ - Final 4/80 p925*	Foreman is placed on sufficient notice of potential safety violation when miners make unusual inquiry concerning setting of roof supports so that failure to check for potential violation and failure to make required methane tests which would have led to discovery of violation constitutes an unwarrantable failure to comply with known violation, as negligence of foreman is imputed to operator and justifies issuance of withdrawal order pursuant to Section 104(d)(2) of Federal Mine Safety and Health Act of 1977.
77: 104(e)	CEMENT DIVISION, NATIONAL GYPSUM COMPANY VINC 79-154-PM December 26, 1979 ALJ - Review Granted 12/79 p2115	
	CONSOLIDATION COAL COMPANY WEVA 80-13-R May 30, 1980 ALJ - Final 5/80 p1173*	Issuance of withdrawal order pursuant to §104(c) of Federal Mine Safety and Health Act of 1977 is justified when operator is cited for violation of its roof control plan and specified time for abatement is two hours and 41 minutes and, six days after issuance of citation, condition has not been adequately abated.
	LAUREL RUN MINING COMPANY MORG 79-107-P June 14, 1979 ALJ - Final 6/79 p535	

Section of Act/Reg	Case Identification	Summary
77: 104(e)	PETER WHITE COAL MINING CORPORATION HOPE 78-374 May 2, 1979 RC - Reverse & Remand 5/79 p327*	Federal Mine Safety and Health Review Commission has jurisdiction under Federal Mine Safety and Health Act of 1977 to review, prior to proposal of penalties by Secretary of Labor, citation containing special findings under §104(e) of Act, even though alleged violations have been abated by mine operator.
	PETER WHITE COAL MINING CORPORATION HOPE 78-444 May 2, 1979 RC - Reverse & Remand 5/79 p330	
	SUNBEAM COAL CORPORATION PITT 79-210 January 29, 1980 ALJ - Review Denied 1/80 p192*	Operator is entitled to review of §104(a) violation and inspector's additional finding of "significant and substantial" even though citations were abated, because operator is vulnerable pursuant to §104(e) to withdrawal order resulting from finding of pattern of "significant and substantial" violations.
77: 105	DUQUESNE LIGHT COMPANY PITT 79-32 January 19, 1979 ALJ - Final Unbound	
77: 105(a)	C F & I STEEL CORP DENV 78-416 November 1, 197^ ALJ - Final Unbound	
	C F & I STEEL CORPORATION DENV 78-416 November 1, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
77: 105(a)	C F & I STEEL CORPORATION DENV 78-417 June 27, 1979 ALJ - Final 6/79 p672*	Mine safety inspector has inherent authority to order reasonable actions in furtherance of inspection which are not enforcement actions under Mine Safety Act; accordingly, inspector's request to stop belt, made before he decided on enforcement action, does not change point of issuance of subsequent withdrawal order.
	CONSOLIDATION COAL COMPANY PITT 78-455 November 22, 1978 ALJ - Final Unbound	
	ENERGY FUELS CORPORATION DENV 78-410 November 1, 1978 ALJ - Review Granted Unbound	
	ERIE MINING CO DENV 78-302-M November 1, 1978 ALJ - Final Unbound	
	ERIE MINING COMPANY DENV 78-302-M November 1, 1978 ALJ - Final Unbound	
	HELVETIA COAL COMPANY PITT 78-322 August 23, 1978 ALJ - Review Granted Unbound	
	HIBBING TACONITE CO. DENV 78-373-M November 1, 1978 ALJ - Final Unbound	
	HIBBING TACONITE COMPANY DENV 78-373-M November 1, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
77: 105(a)	J P BURROUGHS & SON, INC. LAKE 80-223-M June 27, 1980 ALJ - Review Granted 7/80 p1707	
	MONTEREY COAL COMPANY VINC 78-372 June 19, 1978 ALJ - Final Unbound	
	SULLY MILLER CONSTRUCTION COMPANY DENV 78-454-M November 2, 1978 ALJ - Final Unbound	
77: 105(b)	HELVETIA COAL COMPANY PITT 78-322 August 23, 1978 ALJ - Review Granted Unbound	
77: 105(c)	A NEIL HUMPHREYS MORG 78-370 October 26, 1978 ALJ - Final Unbound*	Complaint of discrimination against Mine Safety and Health Administration and West Virginia Department of Mines must be dismissed because rights granted by §105(c) of Federal Mine Safety and Health Act of 1977 arise from employment relationship, a relationship to which neither party is privy. Mine Safety and Health Administration and coal company's decision to terminate investigation of mine accident is not grounds for cause of action for complaint of discrimination filed by representative of deceased miners under §105(c) of Federal Mine Safety and Health Act of 1977, because sanctions cannot be imposed unless there is showing that miners have overtly asserted some right or engaged in some protected activity.

Section of Act/Reg	Case Identification	Summary
77: 105(c)	ARCH MINERAL COAL COMPANY DENV 78-564 June 15, 1979 RC 6/79 p471*	Judge's decision vacating temporary reinstatement order after settlement of discrimination proceeding is affirmed upon receipt of assurance that settlement and vacation of reinstatement order were agreed to by miner.
	BISHOP COAL COMPANY WEVA 80-429-D August 7, 1980 ALJ - Review Denied/ Appealed 8/80 p2160*	According to existing precedent of Federal Mine Safety and Health Review Commission, miners' representatives are not entitled to be compensated for time spent on walkaround during course of spot inspection, and fact that rulings have been appealed to courts is no basis for staying proceedings; operator is entitled to summary decision as matter of law when miners file complaint of discrimination for operator's refusal to pay representatives for time spent on spot inspections.
	CHAPPERAL COAL COMPANY KENT 80-88-D August 28, 1980 ALJ - Final 8/80 p2461*	Miner's complaint, that operator discriminated against him by discharging him because of his concern about operator's failure to provide safe working conditions for miners, must be dismissed when evidence established that condition with which miner was concerned was not hazardous and that primary reason for discharge was miner's inability to perform his work satisfactorily and his frequent arguements with other miners.
	CONSOLIDATION COAL COMPANY LAKE 80-78-D May 5, 1980 ALJ - Final 5/80 p1056*	Miner who participates as miners' representative in walkaround activities with MSHA inspector is entitled to compensation for work he would have performed during time inspection was conducted so that if miner was to be engaged in special work that pays higher rate than general work, he must be compensated at higher rate even if work was never performed, since miners' representative must not suffer loss of pay during participation in inspection according to section 103(f) and 105 of Federal Mine Safety and Health Act of 1977.

Section of Act/Reg	Case Identification	Summary
77: 105(c)	CONSOLIDATION COAL COMPANY WEVA 80-457-D October 20, 1980 ALJ - Final 10/80 p3037	
	CONSOLIDATION COAL COMPANY WEVA 80-648-D October 30, 1980 ALJ - Final 10/80 p3189	
	DAVID PASULA PITT 78-458 March 5, 1979 ALJ - Review Granted 3/79 p69	
	E. BRUCE NOLAND VA 79-102-DM April 25, 1980 ALJ - Final 4/80 p954*	Employee's filing of health and safety complaint against operator is protected activity under Section 105(c) of Federal Mine Safety and Health Act of 1977 and finding of discrimination is warranted when this protected activity is in any manner contributing factor in employee's discharge. Finding of discriminatory discharge requires employer to take affirmative action to abate violation and such action is not limited to rehiring or reinstatement of employee to his former position, but may also include consequential or special damages which are necessary to remove harmful effects of discriminatory conduct. Employee discharged for making health and safety complaint is entitled to consequential damages for discriminatory discharge which may include net income lost during period of discharge less actual earnings employee made during that period and may also include payment for equipment which employee was forced to sell at a loss because employment was terminated.

Section of Act/Reg	Case Identification	Summary
77: 105(c)	HANNA & SOLOMON COAL COMPANY WEVA 79-464-D June 27, 1980 ALJ - Final Unbound*	Operator's failure to explain why it refused to confer with complainant when given opportunity, and its failure to comply with court orders to appear at hearing justifies entering of default judgement against operator in discrimination proceeding, because it can be concluded that by its tactics, operator hoped to frustrate complainant and exhaust him financially so that he would have to withdraw complaint.
	HARLAN FUEL COMPANY KENT 80-328-D September 26, 1980 ALJ - Temporary Reinstatement 9/80 p2697*	Evidence which suggests that miner was discharged because of his refusal to work under unsafe conditions support Secretary's finding that miner's discrimination complaint was not frivolously brought and justifies issuance of temporary reinstatement order; and operator's motion to dismiss reinstatement order is denied because there is some evidence which reasonably tends to show that Secretary's finding was not arbitrarily or capriciously made.
	ISLAND CREEK COAL COMPANY VA 79-81-D June 19, 1980 ALJ - Review Denied/ Appealed 6/80 p1529	
	KENTUCKY CARBON CORPORATION KENT 80-145-D March 10, 1980 ALJ - Review Granted/ Denied Unbound	
	KESSLER COALS, INC. WEVA 80-159-D June 16, 1980 ALJ - Final 6/80 p1441	

Section of Act/Reg	Case Identification	Summary
77: 105(c)	MARTIN MARIETTA CORPORATION SE 80-24-DM June 19, 1980 ALJ - Review Granted 7/80 p1706	
	MOUNTAIN TOP FUEL, INC. KENT 79-161-D July 3, 1979 ALJ - Appealed & Dismissed 7/79 p862	
	OLIVER MINE MAINTENANCE COMPANY NORT 78-416 November 30, 1978 ALJ - Final Unbound	
	PILOT COAL COMPANY VA 79-144-D February 20, 1980 ALJ - Final 2/80 p504*	Miner's refusal to drive hauler truck in fear of injury because of his lack of experience with vehicle is not activity protected by §105(c) of 1977 Act where there were no safety hazards related to road or hauler, and does not constitute discharge on which discrimination claim can be based.
	PONTIKI COAL CORPORATION PIKE 79-9 April 30, 1979 ALJ - Final 4/79 p283	
	SAMUEL PRITCHARD WEVA 79-464-D June 27, 1980 ALJ - Final Unbound*	
	SEWELL COAL COMPANY HOPE 79-76 March 16, 1979 ALJ - Final 3/79 p117	
	THOMAS DUPREE KENT 80-216-D September 25, 1980 ALJ - Final 9/80 p2680	

Section of Act/Reg	Case Identification	Summary
77: 105(c)		Mine Safety and Health Administration can be charged with discriminating against miners who have engaged in safety-related activities, in violation of section 105(c) of Federal Mine Safety and Health Act of 1977, because legislative history of Act establishes that MSHA can be considered "person" subject to liability under section 105(c) because section was intended to protect miners against discrimination from any source. Secretary's motion for summary judgement, alleging that it's agent's conduct cannot be imputed to Secretary because agent was not acting in official capacity when he conducted alleged illegal activities, must be denied when issues of fact concerning scope of agent's authority are in dispute, because Commission rules require that motion for summary judgement be granted only if entire record shows that there is no genuine issue as to any material fact.
	UNIVERSAL COAL & ENERGY COMPANY DENV 78-17 April 25, 1979 ALJ - Final 4/79 p268	
	VESS HALL, JR. SE 79-119-D May 27, 1980 ALJ - Review Denied Unbound*	Order to show cause served on company makes it clear that response to discrimination complaint is required, so that company's agent's action of orally communicating answer does not constitute good cause for failure to file answer and is not grounds for setting aside default judgment entered against company.

Section of Act/Reg	Case Identification	Summary
77: 105(c)	ZIEGLER COAL COMPANY LAKE 80-292-D December 16, 1980 DISTRICT COURT - So. Ill. N/A*	Operator's claim, that temporary reinstatement procedures and subsequent review hearing created by Section 105(c) of Federal Mine Safety and Health Act violate due process requirements because of lack of full evidentiary hearing prior to issuance of reinstatement order and limited scope of subsequent review hearing, is rejected, because encouraging miners to report without hesitation unsafe conditions in mines is legitimate governmental goal and temporary reinstatement procedures under Act are rational means of achieving that goal.
77: 105(c)(1)	ALLIED CHEMICAL CORPORATION WEVA 79-148-D September 27, 1979 ALJ - Review Granted 9/79 p1451	
	COUNCIL OF THE SOUTHERN MOUNTAINS KENT 80-222-D October 3, 1980 ALJ - Review Denied 10/80 p2829	
	DAVID PASULA PITT 78-458 October 14, 1980 RC - Appealed 10/80 p2786*	Right to refuse work in some situations is activity protected by discrimination clause, Section 105(c)(1), of Federal Mine Safety and Health Act of 1977, even though this right is not set forth in plain language of section, because legislative history and provisions in Act encouraging miners to participate in its enforcement clearly indicate that Congress intended that Section 105 (c)(1) be construed to accord this right to miners.

Section of Act/Reg	Case Identification	Summary
77: 105(c)(1)		Miner's refusal to continue to operate continuous mining machine until noise level test was made because he was suffering from effects of loud noise level of machine is activity protected by discrimination clause, Section 105 (c)(1), of Federal Mine Safety and Health Act of 1977, because his suffering was actual, not speculative, and his view that he was exposed to unhealthful and excessive noise levels was reasonable and was supported by objective evidence.
		Statutory right to refuse work under discrimination clause, Section 105(c)(1), of Federal Mine Safety and Health Act of 1977 is broader than right set forth in union contract which permits refusal to work in only "abnormal imminent danger" and Act does not limit miner's refusal to work only to such conditions.
	EASTERN ASSOCIATED COAL CORPORATION WEVA 80-137-D September 29, 1980 ALJ - Review Denied 9/80 Unbound*	Laid-off employee who had no dealings with Federal Mine Safety and Health Administration may not resort to relief found in discrimination clause of 1977 Act when complaint is based solely on allegation that new employees were hired and complainant was never recalled; Commission jurisdiction in discrimination cases is limited to situations described in Section 105(c)(1).
	EASTOVER MINING COMPANY VA 80-60-D September 26, 1980 ALJ - Final 9/80 p2715*	Miner's complaint that he was illegally discharged by operator, in violation of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, must be dismissed when evidence established that miner was in fact never job and never returned.
	ELKINS ENERGY CORPORATION NORT 78-382 June 19, 1979 ALJ - Final 6/79 p558*	Conclusions that miner made safety complaints to superintendent and the evidence does not support operator's reason for discharging miner warrant finding that miner was discharged for having engaged in protected activity.

Section of Act/Reg	Case Identification	Summary
77: 105(c)(1)		Evidence that miner fell asleep on job and failed to perform methane test and prepare preshift examination as required justifies discharge of miner.
	ISLAND CREEK COAL COMPANY WEVA 80-48-D March 19, 1980 ALJ - Final 3/80 p734	
	JAMES F. CRUMBAKER BARB 79-313 January 2, 1980 ALJ - Final 1/80 p7*	Miner's refusal to take roof bolting machine into crosscut where roof bolts were further apart than allowed by operator's roof control plan was protected activity under §105(c)(1) of 1977 Act.
	LESLIE COAL MINING COMPANY KENT 80-3-D August 27, 1980 ALJ - Final 8/80 p2358*	Operator violates Section 105(c)(1) of Federal Mine Safety and Health Act of 1977 which prohibits operators from discriminating against miners who refuse to work under dangerous conditions, when miner is suspended with intent to discharge after refusing to do work which he believed violated roof-control plan and because he believed proper ventilation could not be provided in area.
	MOUNTAIN TOP FUEL, INC. KENT 79-161-D May 22, 1980 ALJ - Denied/Appld/ Dismsd 5/80 p1126*	Dismissal of complaint of discriminatory discharge pursuant to §105(c)(1) of Federal Mine Safety and Health Act of 1977 is justified when there is insufficient evidence to support finding that operator knew miner had made safety complaint and thus discharged him, and there is sufficient evidence that miner was discharged for inadequately performing his work.
		Employer's refusal to comply with order of temporary reinstatement constitutes violation of §105(c) (1) of Federal Mine Safety and Health Act of 1977 and justifies assessment of penalty, even though complaint of discriminatory discharge against employer was dismissed.

Section of Act/Reg	Case Identification	Summary
77: 105(c)(1)	MULLIN CREEK COAL COMPANY, INC. KENT 80-102-D October 10, 1980 ALJ - Final 10/80 p2907	
	PHELPS DODGE CORPORATION WEST 79-349-DM May 30, 1980 ALJ - Review Granted 6/80 p1271	
	SOUTH UNION COAL COMPANY WEVA 80-246-D November 10, 1980 ALJ - Final 11/80 p3258	
	SOUTHERN OHIO COAL COMPANY WEVA 80-487-D December 18, 1980 ALJ - Final 12/80 p3728	Nonunion management employee is "miner" within scope of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, since term "miner" includes any individual working in mine; and foreman is entitled to protections afforded by Section 105(c). Discharge of miner was not unlawful when decision to discharge was made without knowledge of any alleged hazard or protected activity, but was made upon completely independent ground of operator's concern that miners work until end of shift.
	ST. JOE ZINC COMPANY YORK 80-86-DM October 28, 1980 ALJ - Final 12/80 p3594	
	THE VALLEY CAMP COAL COMPANY WEVA 79-116-D April 18, 1980 ALJ - Review Granted 4/80 p928	
	UNITED CASTLE COAL COMPANY VA 79-99-D April 4, 1980 ALJ - Final 4/80 p803	

Section of Act/Reg	Case Identification	Summary
77: 105(c)(2)	C F & I STEEL CORPORATION WEST 80-85-D July 1, 1980 ALJ - Review Granted/ Vacated 7/80 p1710*	Complaint of discrimination based on allegation that operator suspended miner because he made protected safety complaints must be dismissed when evidence establishes that one suspension was issued because of alleged insubordination, that another suspension was issued because miner allegedly helped to instigate strike, and that safety complaints which had been made were too remote to be considered moving force behind suspensions.
	CHARLES W. MILLER LAKE 79-282-D February 5, 1980 ALJ - Appealed 2/80 p294*	Applicant's complaints about assigned duties not registered until halfway through shift and mere disagreements between miner and management are not "protected activity" under Act and cannot be grounds for discrimination charge on basis of safety complaints to operator.
	CLINCHFIELD COAL COMPANY VA 79-64-D November 10, 1979 ALJ - Final 11/79 p1866	
	CONSOLIDATION COAL COMPANY HOPE 79-157 September 19, 1979 ALJ - Final 9/79 p1358	
	UNITED CASTLE COAL COMPANY VA 79-141-D March 13, 1980 ALJ - Review Granted 3/80 p700	
	YOUGHIOGHENY & OHIO COAL COMPANY VINC 78-463 February 23, 1979 RC - Denying Petition Unbound	

Section of Act/Reg	Case Identification	Summary
77: 105(c)(2)		Section 105(c)(2) of 1977 Act, authorizing immediate and temporary reinstatement of miner who files complaint of discrimination pending final adjudication of his case, created additional substantive rights, obligations, and liabilities which may not be retroactively applied to cases arising prior to effective date of that section.
77: 105(c)(3)	BISHOP COAL COMPANY WEVA 79-238-D February 13, 1980 ALJ - Final 2/80 p440	
	CONSOLIDATION COAL COMPANY MORG 78-370 October 26, 1978 ALJ - Final Unbound	
	MID-OHIO MINING COMPANY VINC 79-184 October 26, 1978 ALJ - Final 8/79 p1086	
	RIVERTON COAL COMPANY HOPE 79-77 August 30, 1979 ALJ - Final 8/79 p1228	
	THE VALLEY CAMP COAL COMPANY WEVA 79-116-D July 11, 1980 ALJ - Final on Remand 4/80 p928*	Complaint of discriminatory discharge in violation of §105(c)(3) of the Federal Mine Safety and Health Act of 1977 must be dismissed when evidence shows that, although discharged miner had made safety complaints which had been recognized by operator, miner was discharged as part of general reduction of work force and miner was not qualified, according to operator's standards, to perform other work in mine.
77: 105(d)	BECKLEY COAL MINING COMPANY HOPE 79-10 November 13, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
77: 105(d)	BECKLEY COAL MINING COMPANY HOPE 79-35 November 27, 1978 ALJ - Final Unbound	
	BURGESS MINING & CONSTRUCTION BARB 78-541 December 8, 1978 ALJ - Review Denied Unbound	
	C F & I STEEL CORP DENV 78-416 November 1, 1978 ALJ - Final Unbound	
	C F & I STEEL CORPORATION DENV 78-416 November 1, 1978 ALJ - Final Unbound	
	CLIMAX MOLYBDENUM COMPANY DENV 78-556-M April 9, 1979 ALJ - Final 4/79 p213	
	CONSOLIDATION COAL COMPANY HOPE 78-424 July 19, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-317 June 30, 1978 ALJ - Reversed Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-323 July 11, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
77: 105(d)	CONSOLIDATION COAL COMPANY MORG 78-334 June 28, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY PITT 78-347 August 31, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY PITT 78-455 November 22, 1978 ALJ - Final Unbound	
	ENERGY FUELS CORPORATION DENV 78-410 November 1, 1978 ALJ - Review Granted Unbound	
	ERIE MINING CO DENV 78-302-M November 1, 1978 ALJ - Final Unbound	
	ERIE MINING COMPANY DENV 78-302-M November 1, 1978 ALJ - Final Unbound	
	HARMAR COAL COMPANY PITT 78-342 July 20, 1978 ALJ - Final Unbound	
	HELVETIA COAL COMPANY PITT 78-322 October 8, 1978 RC - Granting Review Unbound	

Section of Act/Reg	Case Identification	Summary
77: 105(d)	HIBBING TACONITE CO. DENV 78-373-M November 1, 1978 ALJ - Final Unbound	
	HIBBING TACONITE COMPANY DENV 78-373-M November 1, 1978 ALJ - Final Unbound	
	ISELIN PREPARATION COMPANY PITT 78-343 August 4, 1978 ALJ - Review Granted/ Dismissed Unbound	
	ITMANN COAL COMPANY HOPE 78-356 May 26, 1978 ALJ - Final Unbound	
	KENTLAND-ELKHORN COAL CORPORATION PIKE 78-395 September 12, 1978 ALJ - Final Unbound	
	MOBILE PREMIX CONCRETE, INC. DENV 78-469-M July 24, 1978 ALJ - Final Unbound	
	MONTEREY COAL COMPANY VINC 78-372 June 19, 1978 ALJ - Final Unbound	
	MONTEREY COAL COMPANY VINC 78-416 July 17, 1978 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
77: 105(d)	PEABODY COAL COMPANY BARB 78-450 August 15, 1978 ALJ - Final Unbound	
	PERMAC, INC. NORT 79-69 March 30, 1979 ALJ- Final 3/79 p211	
	PETER WHITE COAL MINING CORPORATION HOPE 78-348 June 26, 1978 ALJ - Final Unbound	
	PETER WHITE COAL MINING CORPORATION HOPE 78-371 June 16, 1978 ALJ - Final Unbound	
	PETER WHITE COAL MINING CORPORATION HOPE 78-463 July 21, 1978 ALJ - Final Unbound	
	PETER WHITE COAL MINING CORPORATION HOPE 78-495 July 21, 1978 ALJ - Review Granted Unbound	
	PETER WHITE COAL MINING CORPORATION HOPE 78-535 July 26, 1978 ALJ - Final Unbound	
	PETER WHITE COAL MINING CORPORATION HOPE 78-554 October 16, 1979 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
77: 105(d)	PETER WHITE COAL MINING CORPORATION HOPE 78-683 September 6, 1978 ALJ - Final Unbound	
	PETER WHITE COAL MINING CORPORATION HOPE 78-684 September 6, 1978 ALJ - Final Unbound	
	REPUBLIC STEEL CORPORATION PENN 80-56-R January 3, 1980 ALJ - Review Granted Unbound	
	SEWELL COAL COMPANY HOPE 79-6-P September 26, 1980 RC - Remanding 9/80 p2479*	Judge's denial of operator's request for continuance of hearing was abuse of discretion, because judge had initially solicited acceptable hearing dates from parties and then had scheduled hearing date without considering operator's response or inquiring of operator's counsel's availability.
	SULLY MILLER CONSTRUCTION COMPANY DENV 78-454-M November 2, 1978 ALJ - Final 3/79 p113	
	THE ANACONDA COMPANY DENV 78-544-M September 29, 1978 ALJ - Final Unbound	
	THE STANDARD SLAG COMPANY VINC 78-364-M July 24, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
77: 105(d)	THE STANDARD SLAG COMPANY VINC 78-431-M August 31, 1978 ALJ - Final Unbound	
	THE STANDARD SLAGG COMPANY VINC 78-431-M August 31, 1978 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION BARB 78-424 June 29, 1978 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION PITT 78-335 July 11, 1978 ALJ - Review Granted Unbound	
	UNITED STATES STEEL CORPORATION PITT 78-380 August 31, 1978 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION PITT 78-398 November 10, 1978 ALJ - Final Unbound	
77: 106(a)(1)	GRUNDY MINING COMPANY, INC. BARB 78-168-P October 25, 1980 RC Unbound*	Review Commission lacked jurisdiction to grant review of judge's decision on which petition for review had been filed in Federal Appeals Court, since court had exclusive jurisdiction of proceeding at that time under Section 106(a)(1) of 1977 Act.

Section of Act/Reg	Case Identification	Summary
77: 106(a)(1)	ZIEGLER COAL COMPANY LAKE 80-292-D December 16, 1980 DISTRICT COURT - So. Ill. N/A*	Argument of operator, seeking injunctive relief in U.S. district court, that section foreman who complained of discharge sought temporary reinstatement under Federal Mine Safety and Health Act is not "miner" as contemplated by Act is rejected, because district court is precluded from disturbing administrative finding that foreman is miner by Section 106(a)(1) of Act which specifically designates review of such factual determinations to U.S. courts of appeals. Secretary's claim, that U.S. district court is not proper forum for operator's request for injunctive relief from temporary reinstatement of miner because Section 106 (a)(1) of Federal Mine Safety and Health Act mandates that review of Commission orders lies solely with U.S. courts of appeals, is rejected because operator's due process claim is not within restrictions of Section 106(a)(1).
77: 107	UNITED STATES STEEL CORPORATION HOPE 79-123 May 2, 1979 ALJ - Final 5/79 p360*	Inspection of portal bus brakes between shifts by working lever instead of regular examinations over a pit constitutes inadequate examination under 30 CFR §75.512 and imminent danger under §107 of 1977 Act; evidence establishes reasonable expectation of malfunction while people are in portal buses, resulting in death or serious injury before abatement can be accomplished.
77: 107(a)	C F & I STEEL CORPORATION DENV 77-68 February 8, 1979 ALJ - Final Unbound*	Muddy walkway located along moving conveyor belt where miner was working did not constitute imminent danger since if miner fell under belt he could not contact any part of return belt except smooth underside which moves as slowly as stopped belt and it is highly improbable that miner could slip uphill into belt.

Section of Act/Reg	Case Identification	Summary
77: 107(a)	C F & I STEEL CORPORATION DENV 78-417 June 27, 1979 ALJ - Final 6/79 p672*	Evidence that coal and coal dust had accumulated around belt, that belt's rollers were running hot, and that float coal dust was present, is sufficient to support issuance of imminent danger withdrawal order.
	CLIMAX MOLYBDENUM COMPANY DENV 78-581-M December 28, 1979 ALJ - Final 12/79 p2180*	Electrical cable with faulty insulation constituted imminent danger even though insulation was not completely worn through because, when insulation is reduced to certain point, insulated cable assumes properties of bare wire.
	CLIMAX MOLYBDENUM COMPANY DENV 79-196-M October 17, 1980 ALJ - Final 10/80 p2978	Imminent danger withdrawal order issued under Section 107(a) of Federal Mine Safety and Health Act for allegedly hazardous conditions involving drill rig is vacated where, at time inspector issued order, drill rig was shut down, drill motor had been removed, no drilling or mining was taking place, and nearest employees were working in another section 500 feet away.
	CLIMAX MOLYBDENUM COMPANY DENV 79-21-M October 9, 1980 ALJ - Final 10/80 p2873	
	CLIMAX MOLYBDENUM COMPANY WEST 79-21-M October 9, 1980 ALJ - Final 10/80 p2873*	Issuance of imminent danger withdrawal order under Section 107 (a) of 1977 Act, because inspector observed unconsolidated material on 80-foot high bank above work site and allegedly observed cantaloupe-size rock fall to work site, is vacated because inspector testified he did not proceed immediately to area, and, once area was withdrawn, he allowed employees to re-enter to retrieve tools and testimony indicates that conditions did not present impending disaster.

Section of Act/Reg	Case Identification	Summary
77: 107(a)	CONSOLIDATION COAL COMPANY MORG 78-335 February 28, 1979 ALJ - Final Unbound*	Loader left with electrical leads to bolter unit's pump motor torn off and exposed constituted imminent danger under Section 107 (a) of Federal Mine Safety and Health Act of 1977 and justified issuance of withdrawal order, since any person who pushed button activating bolter would be exposed to electric burn or shock hazard.
	CONSOLIDATION COAL COMPANY MORG 79-108 June 19, 1979 ALJ - Final 6/79 p592*	Imminent danger existed where men on raised platform were not wearing safety belts, travelways and platform were not kept free of stumbling hazards, and floor of platform was icy and slippery Fact that men working on dangerous raised platform were experienced is no defense to finding of imminent danger. Fact tht raised platform was being constructed when found to be unsafe is no defense to finding of imminent danger.
	CONSOLIDATION COAL COMPANY MORG 79-109 January 22, 1980 ALJ - Final 1/80 p49*	Faced with situation of possible dam collapse and inundation of mine, inspectors need not have engineering expertise or await results of further testing of studies before taking immediate action to protect miners by issuing imminent danger withdrawal order. Extrinsic factors off mine property such as possible dam collapse causing inundation of mine may serve as basis for finding of imminent danger affecting miners on mine property since 1977 Act has been liberally construed on side of miner safety. Inspectors had enforcement jurisdiction over dam that existed off mine property since, while they may not have had jurisdiction over dam per se, they had jurisdiction under 1977 Act to determine existence of any imminent danger to miners caused by possible collapse of dam.

Section of Act/Reg	Case Identification	Summary
77: 107(a)	CONSOLIDATION COAL COMPANY PENN 80-165-R August 6, 1980 ALJ - Final 8/80 p2144*	Issuance of imminent danger withdrawal order pursuant to section 107(a) of Federal Mine Safety and Health Act of 1977, when inspector finds that spacing of clamps on hoist rope are not in accordance with standards described in 30 CFR 75.1401-1 and also finds bulges between clamps, is justified when evidence established that misspacing could be due to indequate torque on clamps and could cause rope to continue to slip so that rope could pull off thimble, causing cage to fall down shaft, killing or injuring miners in cage.
	CONSOLIDATION COAL COMPANY VINC 78-417 January 9, 1979 RC - Denying Petition Unbound	
		Imminent danger existed where there was loose, unconsolidated rock on highwall which had been rendered even more by several days of rain, and testimony showed that rocks were large in size and fell off highwall at extremely fast rate.
	CONSOLIDATION COAL COMPANY WEVA 79-351-R February 19, 1980 ALJ - Final 2/80 p479*	Voluntary correction by operator of "sag" of concrete floor supporting elevated conveyor belt prior to issuance of withdrawal order does not preclude finding of imminent danger because of overall poor condition of structure, excessive vibration during operation, and failure of voluntary repairs to provide adequate support.
	CYPRUS INDUSTRIAL MINERALS COMPANY DENV 78-558-M August 3, 1978 ALJ - Review Granted in Part 12/79 p2069	

Section of Act/Reg	Case Identification	Summary
77: 107(a)	DAVID CABRERA, INC. SE 79-2-M February 8, 1980 ALJ - Final 2/80 p338* or 343	Machinery removed from service by withdrawal order issued by MSHA inspector cannot be used until operator obtains proper permission to do so and continued use of machinery in defiance of order justifies assessment of $1,800 penalty.
	HARRISON-PELTRON WEST 80-121-R June 24, 1980 ALJ - Final 6/80 p1563*	Imminent danger withdrawal order which was issued because of alleged dangerous roof conditions must be vacated when evidence establishes that, because of mining sequence practiced by operator, operator could abate any dangerous roof condition before death or serious physical harm might reasonably be expected to occur.
	HELVETIA COAL COMPANY PENN 80-143-R November 20, 1980 ALJ - Final 11/80 p3347*	Miners are exposed to imminent danger and withdrawal order is properly issued pursuant to Section 107(a) of Federal Mine Safety and Health Act when bare energized conductor is in close proximity to metal frame of improperly grounded battery charger; fact that battery charger is de-energized at time citation is issued is no defense and determination of imminent danger is not based on "as probable as not" standard.
	ITMANN COAL COMPANY WEVA 79-119-R October 10, 1979 ALJ - Final 10/79 p1573*	Imminent danger withdrawal order under §107(a) of 1977 Act is valid even though §103(k) control order is in effect at mine, since purpose of imminent danger withdrawal order is not only to withdraw miners but to insure that they remain withdrawn until imminent danger has been eliminated.

Section of Act/Reg	Case Identification	Summary
77: 107(a)	ITMANN COAL COMPANY WEVA 80-132-R September 30, 1980 ALJ - Final 9/80 p2738*	Imminent danger withdrawal order, issued under Section 107(a) of 1977 Act because miner was observed shoveling coal in precarious position between unguarded, moving conveyor belts, is affirmed even though miner was not in affected area or exposed to any moving parts at time order was issued, since unsafe practice existed which could reasonably be expected to result in death or serious injury to miner before it could be abated by reinstruction of miner.
	ITMANN COAL COMPANY WEVA 80-7-R June 26, 1980 ALJ - Final 6/80 p1643*	
	ITMANN COAL COMPANY WEVA 80-9-R July 31, 1980 ALJ - Review Denied 7/80 p1986*	Issuance of imminent danger withdrawal order does not require that Mine Safety and Health Administration prove that "it is just as probable as not" that accident would occur because each case must be evaluated in light of risk of serious harm or death to which affected miners are exposed under conditions existing at time of issuance of order, and issuance of withdrawal order is justified when excessive amount of methane is found in area with high potential for roof falls.
	JIM WALTER RESOURCES, INC. BARB 78-638 February 23, 1979 RC - Denying Petition Unbound	
	JIM WALTER RESOURCES Inc. BARB 78-638 January 17, 1979 ALJ - Appealed Unbound*	Imminent danger existed where accident investigation by inspector revealed serious threat of rib roll evidenced by prevalence of loose and overhanging ribs and earlier fatality caused by rib roll.

Section of Act/Reg	Case Identification	Summary
77: 107(a)		Since it was impractical for inspector to determine each incident of loose rib prior to issuing withdrawal order, his finding that entire active workings of mine were affected was sufficient determination of extent of area covered by order. Inspector should not be precluded from issuing imminent danger withdrawal order where further specificity was impractical at time of issuance due to extensiveness of condition at which it was directed.
	KENTUCKY CARBON CORPORATION KENT 79-142-R May 29, 1980 ALJ - Final 6/80 p1253	
	McCOY ELKHORN COAL CORPORATION KENT 80-122-R May 22, 1980 ALJ - Final 5/80 p1143*	
	PEABODY COAL COMPANY DENV 78-557 June 29, 1979 ALJ - Final 6/79 p716*	Neither operation of bulldozer within five feet of holes loaded with ammonium nitrate explosive and primer nor possibility of bulldozer backing over coiled Primacord constituted imminent danger in view of relative insensitivity of such materials.
	PEABODY COAL COMPANY KENT 79-107-R October 29, 1979 ALJ - Final 10/79 p1724*	Finding of imminent danger is affirmed since resin bolts were not anchored thoroughly, water was seeping through roof strata, ominous cracks had appeared in roof, and nearby roof had previously required rebolting with longer bolts than were normally used.

Section of Act/Reg	Case Identification	Summary
77: 107(a)	PIKEVILLE COAL COMPANY PIKE 79-66 February 6, 1980 ALJ - Final 2/80 p307*	Imminent danger withdrawal order issued pursuant to §107(a) of 1977 Act because of accumulation of combustible material is vacated since there was only one potential source of ignition in area, inspector failed to issue order until two hours after discovery of accumulation, and dust samples were inadequate for analysis.
	RIO ALGOM CORPORATION DENV 79-347 January 29, 1980 ALJ - Final 4/80 p784*	Imminent danger existed where broken timber caps and stripped plates on split bolts, which were caused by excessive weight on timbers, indicating recurring ground movement, two unintended roof falls had occurred, miners regularly worked in area, and there was only one exit from mine. Issuance of imminent danger withdrawal order was appropriate even though company removed miners before order was issued because purpose of order is not only to cause withdrawal of miners, but to ensure that they remain out of affected areas until condition is corrected. Whether condition or practice constitutes violation was not intended to be and is not controlling issue in proceeding to review an imminent danger withdrawal order.
	THE PITTSBURG & MIDWAY COAL MINING COMPANY BARB 74-666 April 21, 1980 RC 4/80 p787*	Federal Mine Safety and Health Review Commission will examine anew question of what conditions or practices constitute imminent danger in cases that arise under Federal Mine Safety and Health Act of 1977.
	VAN MULVEHILL COAL COMPANY, INC. SE 79-127 February 25, 1980 RC - Reverse & Remand 2/80 p283*	In considering combined citation and withdrawal order under § §104(a) and 107(a) of 1977 Act, judge's dismissal of citations because withdrawal order had been vacated is reversed since allegation of violation survives vacation of order it is contained in, and, if proven, assessment of penalty is required.

Section of Act/Reg	Case Identification	Summary
77: 107(a)	WESTMORELAND COAL COMPANY HOPE 78-236 August 22, 1979 4th Cir Court (78-1322) N/A*	Substantial evidence supports administrative law judge's ruling that barrier pillar separating mine from flooded adjacent mine constitutes imminent danger when expert testimony for MSHA was based on published and accepted engineering formulas which could be applied to situation at issue while expert testimony for operator was based on unpublished formula that was inapplicable to situation at issue. Fact that barrier pillar separating mine from flooded adjacent mine has been intact for one year since finding of imminent danger warrants remand to Review Commission for hearing of additional evidence on question of imminent danger.
77: 107(b)	JIM WALTER RESOURCES, INC. BARB 77-266-P November 21, 1979 RC - Reverse & Remand 11/79 p1827*	Notice of citation did not lack specificity since operators were able to identify and thereby abate allegedly violative condition and were not deprived of notice sufficient to enable them to defend at hearing.
77: 107(c)	C F & I STEEL CORPORATION DENV 78-417 June 27, 1979 ALJ - Final 6/79 p672*	Imminent danger withdrawal order alleging that coal, coal dust, and float coal dust were present at particular location gives operator adequate notice that presence of float coal dust away from such location may be at issue, in view of tendency of float coal dust to travel with direction of ventilation.
77: 107(e)	HELVETIA COAL COMPANY PENN 79 165-R April 29, 1980 ALJ - Review Denied 4/80 p1011*	Safety of miners requires issuance of withdrawal order encompassing entire mine when excessive concentration of methane is discovered in one section of mine and extent of area which would be affected in event of explosion cannot be determined and threat of explosion affects entire mine.
77: 107(e)(1)	ISLAND CREEK COAL COMPANY HOPE 78-300 July 12, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
77: 108	SKELTON, INC. 78-A-1225 April 23, 1979 DISTRICT COURT (NCO) N/A*	Order under Section 108 of 1977 Mine Act enjoining mine operator from interfering with inspection will be limited in its effect to inspection at hand and necessary follow-up inspections, and will not apply to unrelated future inspections.
77: 109(a)	KERR COAL COMPANY DENV 78-507 April 3, 1979 ALJ - Final 4/79 p84	
	NORTHERN AGGREGATES, INC. WILK 79-144-PM May 7, 1980 ALJ - Final 5/80 p1065	
77: 110(a)	B B & W COAL COMPANY, INC. PIKE 78-63-P October 11, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-13 December 13, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY WEVA 79-354 March 19, 1980 ALJ - Final 3/80 p725	
	GRUNDY MINING COMPANY, INC. BARB 78-168-P June 19, 1978 ALJ - Review Denied & Appealed Unbound	

Section of Act/Reg	Case Identification	Summary
77: 110(a)	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
	KAISER STEEL CORPORATION DENV 78-23-P October 19, 1978 ALJ - Final Unbound	
	KING KNOB COAL COMPANY, INC. WEVA 79-360 June 27, 1980 ALJ - Review Granted 6/80 p1679	
	LAWSON COAL COMPANY, INC. PIKE 78-72-P July 19, 1978 ALJ - Final Unbound	
	MARSHFIELD SAND & GRAVEL, INC. YORK 79-68-M June 10, 1980 ALJ - Final 6/80 p1391*	When violations of safety standards occur because of aberrational and unpredictable actions of safety director, negligence of safety director will not be imputed to operator.
	U S FUEL COMPANY DENV 78-414-P August 29, 1979 ALJ - Final 8/79 p1113	
	WESTERN STATES COAL CORPORATION DENV 78-521-P March 1, 1979 3/79 p27	
77: 110(c)	KENNY RICHARDSON BARB 78-600-P July 12, 1979 ALJ - Appealed 7/79 p874	

Section of Act/Reg	Case Identification	Summary
77: 110(c)	PEABODY COAL COMPANY KENT 80-103 September 25, 1980 ALJ - Final 9/80 p2677	
	PHELPS DODGE CORPORATION DENV 79-561-PM August 27, 1980 ALJ - Final 8/80 p2385*	Subforeman, who orders use of defective equipment with knowledge that equipment had been in shop and repairs had not been completed, can be held liable for violations of mandatory safety standards because Section 110(c) of Federal Mine Safety and Health Act enables Mine Safety and Health Administration to assess penalties against agent of corporate operator who "knowingly authorized, ordered, or carried out" violations of safety standards. Section 110(c) of Federal Mine Safety and Health Act of 1977, which provides for imposition of civil penalties for knowing violations committed by agents of corporations but does not provide for imposition of civil penalties against agents of other entities, does not violate corporate agent's constitutional right to equal protection because classification bears rational relationship to legitimate governmental purpose of penetrating corporate shield to insure that civil penalty would have deterrent effect in corporate setting.
	SOUTHERN OHIO COAL COMPANY WEVA 79-393 August 4, 1980 ALJ - Final 8/80 p2140*	Reduction of proposed penalty for ventilation violation is warranted when evidence established that condition was attributable to negligence of miners and their disregard for compliance with mine safety law, because miners who deliberately endanger themselves and their fellow workers by conscious disregard for compliance with mandatory safety standards should be liable for their actions under the civil and criminal sanctions provided for under Section 110(c) of Federal Mine Safety and Health Act of 1977.

Section of Act/Reg	Case Identification	Summary
77: 110(c)		Increase in proposed penalty for accumulation violation is justified when evidence establishes that violation was attributable to operator's failure to provide miner to clean up accumulation, and excuse of absenteeism is unacceptable in mitigation of noncompliance since operator who cannot operate safely should shut down until workforce sufficient to permit safe operation is available.
	SUPERIOR SAND & GRAVEL, INC. LAKE 79-231-M June 3, 1980 ALJ - Final 6/80 p1308*	Company vice president, acting as agent of company, is liable under §110(c) of Federal Mine Safety and Health Act of 1977 for knowingly refusing to comply with §104(b) withdrawal order.
77: 110(d)	SOUTHERN CLAY, INC. 79-1160 November 15, 1979 3rd Cir Court (NCO) N/A*	
77: 110(i)	ALABAMA FUEL COMPANY & BIG FORK MINING COMPANY HOPE 78-403-P September 5, 1978 ALJ - Final Unbound	
	B B & W COAL COMPANY, INC. PIKE 78-36-P June 22, 1978 ALJ - Final Unbound	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	BLACKJACK COAL COMPANY BARB 79-157-P January 28, 1980 ALJ - Final 1/80 p128	

Section of Act/Reg	Case Identification	Summary
77: 110(i)	BLACKJACK COAL COMPANY, INC. BARB 78-705-P November 20, 1980 ALJ - Final 11/80 p3353	
	BRUBAKER-MANN, INC. WEST 79-193-M January 29, 1980 ALJ - Final 1/80 p227*	Imposition of "instant fines" under 1977 Act is proper since under section 110(i) of Act, Federal Mine Safety and Health Review Commission has authority to assess all civil penalties and instant fines are merely proposals by MSHA.
	CALL & RAMSEY COAL COMPANY, INC. KENT 80-66 August 14, 1980 ALJ - Final Unbound*	
	CATRONS COAL COMPANY BARB 78-416-P September 26, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY HOPE 78-205-P September 21, 1979 ALJ - Final Unbound	
	DAVIS COAL COMPANY HOPE 78-627-P March 7, 1980 RC 3/80 p619*	Judges' decisions approving settlements in which operator was ordered to pay ten percent of originally proposed penalties are affirmed because motions to approve settlements set forth information relevant to criteria under §110(i) of 1977 Act and discussed detrimental effect that originally proposed penalties would have on operator's ability to remain in business.
	DAVIS COAL COMPANY WEVA 80-309 October 21, 1980 ALJ - Final 10/80 p3053*	Financial statements showing unprofitable operation of coal mine should not be given great weight in penalty assessment when operator was able to increase his and his wife's salaries and to secure financial assistance from banks, and company held valuable coal leases.

Section of Act/Reg	Case Identification	Summary
77: 110(i)	E & J COAL CORPORATION HOPE 79-3-P June 17, 1980 ALJ - Final 6/80 p1463	
	FIRE CREEK COAL COMPANY OF TENNESSEE BARB 79-3-P April 5, 1979 ALJ - Final 4/79 p149*	Finding of gross negligence is not justified where mine operator admitted responsibility, with hired manager, for safe operation of mine, and that he should have been aware of cited conditions, and where manager is no longer employed by mine and mine operations have improved. Reduction of initial assessment of $8,830 to $2,000 is justified because mine operator is small and in serious financial difficulties, initial assessments in the aggregate would effectively put company out of business, and operator voluntarily produced company financial records.
	GARRCO COAL COMPANY, INC. KENT 79-37 September 26, 1980 ALJ - Final 9/80 p2693	
	GETZ COAL SALES, INC. VINC 79-60-P August 7, 1980 ALJ - Final 8/80 p2172*	Failure of operator to appear at hearing on civil penalty assessment pursuant to notice constitutes waiver of right to be heard, but such waiver does not constitute type of default within meaning and intent of Rule 63 and show cause order is not necessary; in view of judge's de novo jurisdiction of proceeding, judge assessed penalty based on hearing record and statutory criteria in Section 110(i) of 1977 Act.
	H & H MINING, INC. PIKE 78-68-P September 21, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
77: 110(1)	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
	KAISER STEEL CORPORATION DENV 78-459-P August 21, 1978 ALJ - Final Unbound	
	LAWSON COAL COMPANY, INC. PIKE 78-72-P July 19, 1978 ALJ - Final Unbound	
	LEECO, INC. BARB 78-453-P July 18, 1979 ALJ - Final 7/79 p903	
	MARGIN COAL COMPANY, INC. KENT 79-149 June 25, 1980 ALJ - Final 6/80 p1608	
	PEABODY COAL COMPANY BARB 78-606-P March 26, 1979 ALJ - Final 3/79 p143*	Delay in abatement of roof support violation does not justify finding of lack of good faith of operator for purposes of penalty assessment, since full abatement required setting of more than 100 timbers during foreman's work stoppage, and there was no evidence that operator had condoned work stoppage. Coal company's history of violations before sale of its stock to present owner may be considered in assessing civil penalty where there is no evidence that mine management has undergone any changes, holding company is present owner of coal company, coal company is holding company's sole asset, there has been continuity of operation of mine, and only change has been of sale of stock.

Section of Act/Reg	Case Identification	Summary
77: 110(1)	PEABODY COAL COMPANY BARB 78-613-P November 29, 1979 ALJ - Final 11/79 p1928*	In assessing penalty, administrative law judge can consider history of violations of company even though company had changed ownership and management of safety matters, since company failed to establish that substantive changes in its mine safety and health policy had occurred.
	PEABODY COAL COMPANY BARB 78-653-P April 3, 1979 ALJ - Final 4/79 p28*	Despite consistently occurring coal and coal dust accumulation violations, coal company's large size, and existence of cited accumulations over long period without clean up, mitigation of Secretary's recommended civil penalty for 30 CFR §75.400 violation is justified since conditions cited were neither grave nor posed a serious threat to miner safety and since they were cleaned up promptly once order was issued.
	PEABODY COAL COMPANY KENT 80-124 April 29, 1980 ALJ - Review Dismissed 4/80 p987*	Mine management's superficial response to miners' complaint of separations in roof strata, its failure to adequately examine area for potential safety violations, and its refusal to provide supplemental supports for hazardous roof conditions constitutes high degree of negligence which justifies assessment of substantial penalty against operator for violating requirements of 30 CFR 75.200 which states that roofs must be adequately supported.
	PEABODY COAL COMPANY VINC 79-67-P March 29, 1979 ALJ - Final 3/79 p179*	Mine operator's negligent enforcement of its safety belt requirement, illustrated by actions of several employees in climbing to top of gear housing in full view of foreman, warrants increase in penalty proposed by Secretary of Labor for violation of 30 CFR §77.1710(g) from $2,000 to $3,500.

Section of Act/Reg	Case Identification	Summary
77: 110(i)	PEGGS RUN COAL COMPANY, INC. PITT 76X207-P May 18, 1979 RC 5/79 p350*	In light of operator's financial statement showing 1976 assets of $3,173,827, sales of $4,786,777, and officers' compensation of $150,000, penalty assessment of $830 was not inappropriate.
	PIKEVILLE COAL COMPANY PIKE 78-76-P September 19, 1978 ALJ - Final Unbound	
	RIVER COAL COMPANY BARB 78-143-P August 1, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P June 7, 1979 RC - Appealed 6/79 p469*	Assessment by judge of civil penalties totalling $16,673 is supported by substantial evidence; under §110(i) of 1977 Act, de novo assessment of penalties is within authority of Commission and its judges.
	SKYVIEW MINING, INC. PIKE 78-365-P April 17, 1979 ALJ - Final 4/79 p230	
	SUNSHINE COLLERIES, INC HORT 78-56-P June 23, 1978 ALJ - Final Unbound	
	VAN MULVEHILL COAL COMPANY, INC. SE 79-127 February 25, 1980 RC - Reverse & Remand 2/80 p283*	Judge's dismissal of citations because coal was not being produced when citations were issued and operator was in poor financial condition and cooperated with inspector is reversed since these factors are taken into consideration when assessing appropriate penalties under §110 (i) of 1977 Act.
77: 110(i)1	MAUDLIN CONSTRUCTION COMPANY CENT 80-114-M December 18, 1980 ALJ - Final 12/80 p3712*	

Section of Act/Reg	Case Identification	Summary
77: 110(k)	ALABAMA FUEL COMPANY & BIG FORK MINING COMPANY HOPE 78-403-P September 5, 1978 ALJ - Final Unbound	
	CO-OP MINING COMPANY DENV 79-1-P December 10, 1980 RC 12/80 p3475*	Administrative law judge erred in approving proposed penalty settlement of parties where parties' stipulation shows that alleged violation did not occur, because compliance with Federal Mine Safety and Health Act and its standards is not fostered by payment of civil penalty where stipulated facts establish that no violation occurred.
	CO-OP MINING COMPANY DENV 79-128-P September 26, 1979 ALJ - Disciplinary Hearing 9/79 p1413	
	EMPIRE ENERGY CORPORATION WILK 79-4-PM February 13, 1979 ALJ - Final Unbound	
	KAISER STEEL CORPORATION DENV 78-459-P August 21, 1978 ALJ - Final Unbound	
	POMERLEAU BROS , INC. WILK 79-4-PM February 13, 1979 ALJ - Final Unbound*	Administrative law judge has responsibility to make independent evaluation of facts relating to six statutory criteria set out in Section 110(k) of Federal Mine Safety and Health Act of 1977 before approving or denying proposed settlement for violations of standards promulagated under Act.

Section of Act/Reg	Case Identification	Summary
77: 110(k)	THE HELEN MINING COMPANY PITT 79-11-P March 21, 1980 RC - Deny Motion to Stay Not Printed*	Mine Workers' motion for order staying effect of Review Commission's decisions limiting rights to walkaround pay for miner participants in mine inspections pending appeal is denied, since union failed to show irreparability of injury to miners and to grant stay would be in derogation of Commission's statutory function of making uniform national policy.
	THE VALLEY CAMP COAL COMPANY MORG 78-46-P August 9, 1979 ALJ - Memorandum Opinion 8/79 p1012	
77: 111	EASTERN ASSOCIATED COAL CORPORATION WEVA 80-473 November 26, 1980 ALJ - Review Granted 11/80 p3422	
	ITMANN COAL COMPANY WEVA 80-9-R July 31, 1980 ALJ - Review Denied 7/80 p1986*	Miners who are idled by withdrawal order are entitled to receive compensation for idle time, according to Section 111 of Federal Mine Safety and Health Act of 1977, and amount of time that miners are idled is period of withdrawal minus period of alternate work which they performed, and miners are entitled to be compensated for that period, up to maximum of one week.
	VULCAN MATERIALS BARB 78-367-M October 10, 1978 ALJ - Final Unbound*	Section 111 of Federal Mine Safety and Health Act of 1977, which provides limited compensation for miners idled by withdrawal orders issued under Act, does not distinguish between permanent and temporary closures resulting from such orders.

Section of Act/Reg	Case Identification	Summary
77: 111		Operator's intention to cease operating quarry at some point in time did not negate idled miners' entitlement to one week's compensation under §111 of Federal Mine Safety and Health Act of 1977 where permanent closing of quarry resulted from issuance of Section 104 withdrawal order and evidence showed operator would otherwise have continued operations during week in question.
	WILLIAMSON SHAFT CONTRACTING COMPANY VA 80-17-C January 31, 1980 ALJ - Review Granted 1/80 p265	
77: 113(d)	ARCH MINERAL COAL COMPANY DENV 78-564 March 9, 1979 RC - Remand 3/79 p19*	Judge's failure to include in order approving settlement of discrimination complaint brought by Secretary of Labor, terms of settlement and statement as to whether complainant agrees to or acquiesces in settlement, requires remand to judge for limited purpose of supplementing record to include such information.
	DAVID PASULA PITT 78-458 April 11, 1979 RC - Vacating Stay 4/79 p25*	Commission judge lacks authority to stay effective date of his decision once it is issued or to consider motion for reconsideration of such decision.
	PENN ALLEGH COAL COMPANY, INC. PITT 78-97-P January 3, 1979 RC - Grant Strike Motion 3/79 p5*	Motion to strike judge's supplemental opinion issued after date of decision which constitutes judge's "final disposition" of case within meaning of Section 113 (d) of 1977 Act is granted, since issuance of multiple opinions threatens smooth functioning of review process and may tend to cast doubt on judge's impartiality.
	REPUBLIC STEEL CORPORATION PITT 78-156-P November 27, 1978 RC - Remand 3/79 p3*	Judge's failure to state reasons for approval of settlement requires remand of case to judge for entry into record of settlement agreement, statement of reasons for approval of agreement, and statement of facts of record supporting judge's determination.

Section of Act/Reg	Case Identification	Summary
77: 113(d)(1)	CAPITOL AGGREGATES, INC. DENV 79-163-PM May 23, 1980 RC 5/80 p1040*	Administrative law judge has no authority to stay effect of or to reconsider his decision since decision constitutes his "final disposition of proceedings" within meaning of Section 113(d)(1) of Federal Mine Safety and Health Act of 1977 and of Commission Rule 65 (a), 29 CFR §2700.65(a)
	CLINCHFIELD COAL COMPANY NORT 78-417-P May 8, 1979 RC 5/79 p337	
	COUNCIL OF THE SOUTHERN MOUNTAINS, INC. KENT 80-222-D November 12, 1980 RC 11/80 p3216*	Judge's disposition, which found operator in violation of discrimination clause and ordered reimbursement for attorneys' fees and expenses but did not specify dollar amount of award, was not order which finally disposed of proceeding and did not initiate running of statutory review period; accordingly, petitions for discretionary review are dismissed as premature.
	PEABODY COAL COMPANY LAKE 80-25 May 16, 1980 RC 5/80 p1035*	Administrative law judge lacked jurisdiction to rule on operator's motion for reconsideration of prior decision because judge's prior decision constituted "his final disposition of the proceeding" within meaning of Section 113(d)(1) of 1977 Act, terminating judge's jurisdiction over case.
77: 113(d)(2)(A)(i)	BURGESS MINING & CONSTRUCTION BARB 78-541 April 12, 1979 RC - Denying Review Unbound	

Section of Act/Reg	Case Identification	Summary
77: 113(d)(2)(A)(i)	CRESCENT COAL COMPANY PIKE 77-71 August 8, 1979 ALJ - Review Granted 8/80 p2137	
	SUNBEAM COAL CORPORATION PITT 79-210 March 10, 1980 RC - Dismissing Review 4/80 p775*	Operator's petition for discretionary review filed 34 days after judge's decision is dismissed as untimely filed since §113(d)(2)(A)(i) of 1977 Act requires that petition be received by Review Commission within 30 days after issuance of judge's decision; additional five-day period for filing responses by mail in 29 CFR §2700.8(b) does not apply to statutory period here.
77: 113(d)(2)(A)(iii)	COWIN & COMPANY, INC. BARB 74-259 April 11, 1979 RC - on Remand 4/79 p20*	Failure of applicant seeking review of imminent danger withdrawal order to substantiate claim that "emergency condition" excused it from compliance with standards requires affirmance of withdrawal order.
77: 113(d)(2)(C)	CLIMAX MOLYBDENUM COMPANY DENV 79-102-M October 31, 1979 RC - Denying Record Suppl 10/79 p1499*	Operator's motion that Commission accept deposition of MSHA inspector and other documents not in hearing record as attachments to its brief on discretionary review is denied since §113(d)(2)(C) of Federal Mine Safety and Health Act of 1977, which limits material Commission can consider on review, evinces Congress' view that administrative law judge should first be given opportunity to admit and examine evidence. Operator's motion that Commission remand case to administrative law judge for sole purpose of admitting deposition into evidence is denied since remand would circumvent Congress' intent, as reflected in §113(d)(2)(C) of 1977 Act, that judge be given first opportunity to examine evidence and operator stated no reason why it failed to enter deposition into evidence when case was before judge.

Section of Act/Reg	Case Identification	Summary
77: 113(d)(2) (C)	HELVETIA COAL COMPANY PITT 79-12-P April 23, 1979 RC - Striking References 4/79 p26*	Evidentiary material attached to Secretary's petition for review that was not part of record before administrative law judge cannot be considered by Commission.
77: 115	NATIONAL INDUSTRIAL SAND ASSOCIATION 78-2446 May 16, 1979 3rd Cir Court (NCO) N/A*	
77: 202(b)(2)	KANAWHA COAL COMPANY WEVA 80-150 June 27, 1980 ALJ - Review Granted 6/80 p1658	
	KANAWHA COAL COMPANY WEVA 80-40 June 24, 1980 ALJ - Review Granted 6/80 p1576	
77: 202(e)	ALABAMA BY-PRODUCTS CORPORATION SE 79-110 February 12, 1980 ALJ - Review Granted 2/80 p407 or 422	
	THE NORTH AMERICAN COAL CORPORATION LAKE 79-118 February 12, 1980 ALJ - Review Denied 2/80 p405	
77: 203(b)	UNITED STATES STEEL CORPORATION HOPE 79-251 May 2, 1979 ALJ - Final 5/79 p358	

Section of Act/Reg	Case Identification	Summary
77: 301(b)	IDEAL CEMENT COMPANY BARB 79-61-PM October 3, 1979 ALJ - Final 10/79 p1506*	Mandatory standards under 30 CFR Parts 55, 56, and 57 are applicable under 1977 Act since Section 301(b) of 1977 Amendments Act expresses Congressional intent that standards promulgated pursuant to Federal Metal and Nonmetallic Mine Safety Act remain in effect under 1977 Act and mining industry was given ample opportunity for comment during rulemaking process.
77: 301(c)(2)	DESKINS BRANCH COAL COMPANY PIKE 78-329-P August 16, 1978 ALJ - Motion to Remand to A.O. 5/79 p401	
	KANAWHA COAL COMPANY WEVA 80-150 June 27, 1980 ALJ - Review Granted 6/80 p1658	
	KANAWHA COAL COMPANY WEVA 80-40 June 24, 1980 ALJ - Review Granted 6/80 p1576	
	PEERLESS EAGLE COAL COMPANY HOPE 79-145-P May 15, 1979 ALJ - Motion to Remand to A.O. 5/79 p399	
77: 302(c)	GRUNDY MINING COMPANY, INC. BARB 78-168-P November 17, 1980 US 6th Cir Court N/A*	Parties appearing before Federal Mine Safety and Health Review Commission and Act adjudged fairly and on their own merits and, where judge does not afford operator fair opportunity and neutral forum in which to present proper defense and derisively rejects operator's claim that there was no causation between violation and injury which occurred, order is vacated and case is remanded for de novo hearing before different judge.

Section of Act/Reg	Case Identification	Summary
77: 307	KANAWHA COAL COMPANY WEVA 80-150 June 27, 1980 ALJ - Review Granted 6/80 p1658	
	KANAWHA COAL COMPANY WEVA 80-40 June 24, 1980 ALJ - Review Granted 6/80 p1576	
77: 318(i)	PENN ALLEGH COAL COMPANY, INC. PITT 78-97-P April 7, 1978 ALJ - Review Granted Unbound	
29 CFR 2700.2 (i)(I)	A NEIL HUMPHREYS MORG 78-370 October 26, 1978 ALJ - Final Unbound*	Safety inspector for United Mine Workers of America is authorized to file complaint as representative of miners under §2700.2(i) of Commission's Interim Procedural Rules if miners are members of UMWA and safety inspector is acting in his official capacity ad agent of UMWA.
29 CFR 2700.5 (I)	CANTERBURY COAL COMPANY PITT 78-127 May 4, 1979 RC - Striking Material 5/79 p335*	Upon motion of Secretary of Labor and union, allegedly defamatory matter regarding conduct of counsel is stricken from Commission judge's motion to intervene in review preceedings, since to include such allegations deprives those accused of procedural safeguards of Interim Rule 5.
	CO-OP MINING COMPANY DENV 79-128-P July 27, 1979 ALJ - Covering Order 7/79 p970	
29 CFR 2700.5 (b) (I)	OLIVER MINE MAINTENANCE COMPANY NORT 78-415 March 27, 1979 RC - Appealed - Dismissed 3/79 p23*	Review Commission judge lacks authority to censure or otherwise discipline attorneys appearing before him in absence of determination by Commission under Interim Rule 5(b) (29 CFR §2700. 5(b)) that disciplinary proceedings are warranted.

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.5 (d)	DUVAL CORPORATION WEST 79-194-M April 14, 1980 RC - Appealed 4/80 p781	
	SUNBEAM COAL CORPORATION PITT 79-210 March 10, 1980 RC - Review Dismissed 4/80 p775	
29 CFR 2700.7 (I)	CUT SLATE, INC. WILK 79-13-PM July 25, 1979 RC - Reverse & Remand 7/79 p796*	Rule 7 of Review Commission's Interim Rules of Procedure (Rule 51 of permanent rules) regarding location of hearing is interpreted to apply to all instances where parties are required personally to convene, including prehearing conferences. Review Commission judge abused his discretion by holding prehearing conference at location objected to by mine operator as requiring 900 miles' round trip, and by issuing default order against operator for failing to appear at conference.
29 CFR 2700.8 (b)	BURGESS MINING & CONSTRUCTION SE 79-42-R March 18, 1980 ALJ - Review Granted Not Printed*	Secretary of Labor's filing of brief by mail 25 days after order granting his petition for discretionary review rather than within 20 days as required by 29 CFR §2700.72 is not grounds for vacation of direction for review since Secretary is entitled, pursuant to 29 CFR §2700.8(b), to five additional days when service is by mail.
	F & G SAND & GRAVEL CO, INC. YORK 80-46-M November 25, 1980 ALJ - Final 11/80 p3421	
	J P BURROUGHS & SON, INC. LAKE 80-223-M June 12, 1980 RC - Remanding 6/80 p1199*	Judge committed reversible error in granting Secretary's motion to dismiss proceeding without waiting for and considering operator's timely opposition to motion.

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.8 (b)	SUNBEAM COAL CORPORATION PITT 79-210 March 10, 1980 RC - Dismissing Review 4/80 p775*	Operator's petition for discretionary review filed 34 days after judge's decision is dismissed as untimely filed since §113(d)(2)(A)(i) of 1977 Act requires that petition be received by Review Commission within 30 days after issuance of judge's decision; additional five-day period for filing responses by mail in 29 CFR §2700.8(b) does not apply to statutory period here.
29 CFR 2700.9	NORTHERN AGGREGATES, INC. YORK 79-79-M May 7, 1980 ALJ - Final 5/80 p1062	
29 CFR 2700.9 (I)	CLIMAX MOLYBDENUM COMPANY DENV 79-3-M September 21, 1979 RC - Reverse & Remand 9/79 p1309*	Judge's dismissal of operator's applications for review for failure to comply with prehearing order was abuse of discretion in view of judge's failure to specify date for compliance with order.
29 CFR 2700.10 (b)	J P BURROUGHS & SON, INC. LAKE 80-223-M June 12, 1980 RC - Remanding 6/80 p1199*	Judge committed reversible error in granting Secretary's motion to dismiss proceeding without waiting for and considering operator's timely opposition to motion.
29 CFR 2700.10 (d) (I)	THE NORTH AMERICAN COAL CORPORATION VINC 78-377 October 20, 1978 ALJ - Final Unbound	
29 CFR 2700.11 (c) (I)	ERIE MINING COMPANY DENV 79-23-M September 29, 1980 ALJ - Final 9/80 p2717	
29 CFR 2700.15 (I)	ELM SHOALS COAL COMPANY BARB 78-101-P August 22, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.15 (I)	REPUBLIC STEEL CORPORATION WILK 78-300-M August 25, 1978 ALJ - Final Unbound	
29 CFR 2700.15 (a) (I)	KENNECOTT COPPER CORPORATION DENV 79-457-M August 8, 1979 ALJ - Final 8/79 p1009	
29 CFR 2700.15 (b) (I)	ARCH MINERAL CORPORATION DENV 79-151-P May 11, 1979 ALJ - Final 5/79 p380	
29 CFR 2700.18	BURGESS MINING & CONSTRUCTION BARB 78-541 December 8, 1978 ALJ - Review Denied Unbound PETER WHITE COAL MINING CORPORATION HOPE 78-554 October 16, 1979 ALJ - Review Granted Unbound	
29 CFR 2700.18 (I)	BURGESS MINING & CONSTRUCTION BARB 78-541 October 13, 1978 ALJ - Review Denied Unbound	
29 CFR 2700.18 -22 (I)	ISELIN PREPARATION COMPANY PITT 78-343 August 4, 1978 ALJ - Review Granted/ Dismissed Unbound	
29 CFR 2700.18 (a) (I)	CONSOLIDATION COAL COMPANY PITT 78-347 August 31, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.18 (a) (I)	PERMAC, INC. NORT 79-69 March 30, 1979 ALJ- Final 3/79 p211	
	THE STANDARD SLAG COMPANY VINC 78-431-M August 31, 1978 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION PITT 78-380 August 31, 1978 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION PITT 78-398 November 10, 1978 ALJ - Final Unbound	
29 CFR 2700.18 (b)	ERIE MINING COMPANY DENV 79-23-M September 29, 1980 ALJ - Final 9/80 p2717	
29 CFR 2700.19 (c) (I)	ISLAND CREEK COAL COMPANY PIKE 79-18 August 3, 1979 RC 8/79 p989*	Under Interim Rules of Procedure, application for review of withdrawal order that reaches Review Commission three days after expiration of filing period is untimely filed, despite fact that MSHA received copy of application within filing period.
29 CFR 2700.21	BURGESS MINING & CONSTRUCTION BARB 78-541 December 8, 1978 ALJ - Review Denied Unbound	
29 CFR 2700.21 (I)	BURGESS MINING & CONSTRUCTION BARB 78-541 October 13, 1978 ALJ - Review Denied Unbound	

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.24 (I)	GATEWAY COAL COMPANY PITT 78-368-P March 5, 1979 ALJ - Final 3/79 p61	
29 CFR 2700.26 (I)	MARY BETH COAL COMPANY BARB 79-113-P March 30, 1979 ALJ - Final 3/79 p209	
29 CFR 2700.26 (b) (I)	OSBORNE COAL COMPANY BARB 78-618-P September 27, 1979 ALJ - Final 9/79 p1445	
29 CFR 2700.26 (c) (I)	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	LAWSON COAL COMPANY, INC. PIKE 78-404-P September 18, 1979 ALJ - Final 9/79 p1356	
	M & E COAL COMPANY PIKE 78-331-P September 18, 1979 ALJ - Final 9/79 p1354	
	THACKER COAL COMPANY PIKE 78-348-P September 18, 1979 ALJ - Final 9/79 p1350	
	WILLIAMS COAL COMPANY HOPE 77-238-P July 24, 1979 ALJ - Final 7/79 p928	

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.26 (d) (1)	DESKINS BRANCH COAL COMPANY PIKE 78-329-P March 14, 1979 ALJ - Final 5/79 p384*	Failure timely and substantively to comply with judge's pretrial order requiring exchange of witness and exhibit lists and testimonial synopsis and filing of stipulations resulting in prejudice to respondent mine operator amounts to failure of prosecution under Interim Rule 2700.26(d) and warrants dismissal of Secretary's petition for assessment of civil penalty with prejudice.
29 CFR 2700.26 (d)(1) (1)	DESKINS BRANCH COAL COMPANY PIKE 78-329-P March 14, 1979 ALJ - Final 5/79 p384*	Interim Rule 29 CFR §2700.26(d) (1) and (2) does not forclose consideration of prejudice suffered by respondent mine operator in evaluating propriety of dismissal of Secretary of Labor's petition for civil penalty assessment for failure of prosecution.
29 CFR 2700.26 (d)(2) (1)	DESKINS BRANCH COAL COMPANY PIKE 78-329-P March 14, 1979 ALJ - Final 5/79 p384*	Interim Rule 29 CFR §2700.26(d) (1) and (2) does not forclose consideration of prejudice suffered by respondent mine operator in evaluating propriety of dismissal of Secretary of Labor's petition for civil penalty assessment for failure of prosecution.
29 CFR 2700.26 (d)(3) (1)	PEABODY COAL COMPANY DENV 78-565-P August 30, 1979 ALJ - Final 8/79 p1273	
29 CFR 2700.26 (d)(39) (1)	CO-OP MINING COMPANY DENV 79-128-P July 27, 1979 ALJ - Order 7/79 p971	
29 CFR 2700.26 (e) (1)	GETZ COAL SALES, INC. VINC 78-321-P August 24, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.27	COMICO AMERICAN, INC. WEST 79-212-M October 26, 1979 ALJ - Final 10/79 p1712	
	SALT LAKE COUNTY ROAD DEPARTMENT WEST 79-365-M November 25, 1980 ALJ - Review Granted 11/80 p3409	
29 CFR 2700.27 (a)	ARCH MINERAL CORPORATION WEST 79-58 February 7, 1980 RC 2/80 p277*	Commission will not consider question of what circumstances, if any, may excuse Secretary of Labor's late filing of penalty proposal under final Commission Rule 27(a) in case which arose during transition period between interim and final rules of procedure, since such question is not squarely presented.
	PEABODY COAL COMPANY LAKE 80-25 May 16, 1980 RC 5/80 p1035*	Operator's denial that coal spillage constituted "accumulation" within meaning of 30 CFR § 75.400 after administrative law judge's disapproval of settlement entitled operator to hearing pursuant to Section 105(d) of Federal Mine Safety and Health Act of 1977 even though operator admitted existence of spillage since depth of spillage was disputed issue of material fact that remained unresolved.
29 CFR 2700.27 (c)	JAQUAYS MINING CORPORATION WEST 80-1-M December 16, 1980 ALJ - Final 12/80 p3625	
29 CFR 2700.27 (d) (1)	WESTERN STATES COAL CORPORATION DENV 78-521-P March 1, 1979 ALJ - Final 3/79 p27*	Coal company's untimely attempt to withdraw its contest of alleged violation at hearing and its offer to pay initial assessment is offer of settlement which must be concurred in by MSHA and approved by Administrative Law Judge in civil penalty proceeding pursuant to Interim Commission Rule 27(d).

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.28	SIGLER MINING WEVA 80-519 November 5, 1980 ALJ - Review Granted 11/80 p3225	
29 CFR 2700.29	CONSOLIDATION COAL COMPANY MORG 79-13 January 24, 1979 ALJ - Review Granted 8/80 p2132	
29 CFR 2700.29 (I)	CONSOLIDATION COAL COMPANY MORG 79-13 September 4, 1979 RC - Reverse & Remand 9/79 p1300*	Period of 30 days provided in Interim Procedural Rule 29 for filing applications for compensation can be extended in appropriate circumstances. Applicant's attempt to secure compensation from operator when it first discovered potential claim and lack of prejudice to operator make extension of 30-day filling period appropriate.
	JIM WALTER RESOURCES, INC. BARB 79-75 January 9, 1979 ALJ - Final Unbound	
	UNITED MINE WORKERS OF AMERICA, LOCAL NO 5429 MORG 79-13 January 24, 1979 ALJ - Review Granted Unbound	
29 CFR 2700.30	BISHOP COAL COMPANY WEVA 79-238-D February 13, 1980 ALJ - Final 2/80 p440	
	COASTAL STATES ENERGY COMPANY DENV 79-88-P September 5, 1979 ALJ - Final 9/79 p1337	

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.35 (I)	OLIVER MINE MAINTENANCE COMPANY NORT 78-416 November 30, 1978 ALJ - Final Unbound	
29 CFR 2700.43	MARTIN MARIETTA CORPORATION SE 80-24-DM June 19, 1980 ALJ - Review Granted 7/80 p1706	
29 CFR 2700.48 (I)	THE NORTH AMERICAN COAL CORPORATION VINC 78-377 October 20, 1978 ALJ - Final Unbound	
29 CFR 2700.49 (I)	FIRE CREEK COAL COMPANY OF TENNESSEE BARB 79-264-P July 2, 1979 ALJ - Final 7/79 p801	
	WEBSTER COUNTY COAL CORPORATION BARB 78-185-P June 7, 1978 ALJ - Final Unbound*	
29 CFR 2700.53	SEWELL COAL COMPANY HOPE 79-6-P March 12, 1980 ALJ - Review Granted 3/80 p690	
29 CFR 2700.54 (I)	DAVID PASULA PITT 78-458 April 11, 1979 RC - Vacating Stay 4/79 p25*	Commission judge lacks authority to stay effective date of his decision once it is issued or to consider motion for reconsideration of such decision.
	PENN ALLEGH COAL COMPANY, INC. PITT 78-97-P January 3, 1979 RC - Grant Strike Motion 3/79 p5*	Motion to strike judge's supplemental opinion issued after date of decision which constitutes judge's "final disposition" of case within meaning of Section 113 (d) of 1977 Act is granted, since issuance of multiple opinions threatens smooth functioning of review process and may tend to cast doubt on judge's impartiality.

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.55 (I)	DAVID PASULA PITT 78-458 April 11, 1979 RC - Vacating Stay 4/79 p25*	Commission judge lacks authority to stay effective date of his decision once it is issued or to consider motion for reconsideration of such decision.
29 CFR 2700.56 (c)	CAPITOL AGGREGATES, INC. DENV 79-163-PM April 22, 1980 ALJ - Stay Order 4/80 p948	
29 CFR 2700.60	SEWELL COAL COMPANY HOPE 79-6-P March 12, 1980 ALJ - Review Granted 3/80 p690	
29 CFR 2700.63	CLIMAX MOLYBDENUM DENV 79-3-M September 21, 1979 RC Unbound	
	SEWELL COAL COMPANY HOPE 79-6-P March 12, 1980 ALJ - Review Granted 3/80 p690	
29 CFR 2700.63 (a)	BRADLEY COUNTY HIGHWAY DEPARTMENT BARB 79-94-PM September 26, 1979 ALJ - Final 9/79 p1443	
	FLAT TOP MINING, INC. PIKE 79-29-P September 26, 1979 ALJ - Final 9/79 p1410	
	ROYAL DARBY COAL COMPANY, INC. KENT 80-220 December 30, 1980 ALJ - Final 12/80 p3753	
29 CFR 2700.63 (b)	PEERLESS EAGLE COAL COMPANY HOPE 79-145-P September 27, 1979 ALJ - Final 9/79 p1448	

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.65 (a)	CAPITOL AGGREGATES, INC. DENV 79-163-PM May 23, 1980 RC 5/80 p1040*	Administrative law judge has no authority to stay effect of or to reconsider his decision since decision constitutes his "final disposition of proceedings" within meaning of Section 113(d)(1) of Federal Mine Safety and Health Act of 1977 and of Commission Rule 65 (a), 29 CFR §2700.65(a)
	KERR-McGEE NUCLEAR CORPORATION DENV 79-201-P November 14, 1979 RC - Vacate & Remand 11/79 p1783*	Administrative law judge's dismissal of civil penalty proceeding is vacated since judge's written decision did not include bench decision, findings of fact, conclusions of law, or reasons or basis for them, as required by Commission Rule 65(a), 29 CFR §2700.65(a).
	NATIONAL MINES CORPORATION KENT 79-345-D October 24, 1980 RC Not Printed*	Judge's dispositions, which found operator in default and found that operator discriminated against miner, but which directed parties to confer in order to stipulate amount of back wages due and amount of costs and expenses incurred, were not orders which finally disposed of proceedings and did not initiate running of statutory review period; accordingly, operator's petition for discretionary review is denied as premature.
29 CFR 2700.65 (c)	BRADY'S BEND CORPORATION PENN 79-70-M October 7, 1980 RC - Denying Request 10/80 p2747	
	CAPITOL AGGREGATES, INC. DENV 79-163-PM May 23, 1980 RC 5/80 p1040*	Administrative law judge may, pursuant to Commission Rule 65(c), 29 CFR §2700.65(c), by letter placed in record, inform Federal Mine Safety and Health Review Commission that he erred in his decision or that case should be returned to him for other reasons and suggest that his decision be directed for review and case remanded to him.

Section of Act/Reg	Case Identification	Summary
29 CFR 2700.65 (c)	NEW JERSEY PULVERIZING COMPANY YORK 79-94-M August 8, 1980 ALJ - Final 8/80 p2186	
	NEW JERSEY PULVERIZING COMPANY YORK 79-94-M July 2, 1980 7/80 p1686* RC	Administrative law judge erred in reviewing and assessing lower penalties than those proposed by Secretary without according Secretary right to be heard, and judge lacked jurisdiction to reserve right to reconsider assessment upon request.
	THE NORTH AMERICAN COAL CORPORATION LAKE 79-118 July 21, 1980 RC 7/80 p1694*	Secretary's petition for discretionary review filed 51 days after issuance of judge's decision is dismissed as untimely filed and Secretary's argument, that his filing of motion to correct tolled running of 30-day period for filing petition, is rejected.
29 CFR 2700.72	BURGESS MINING & CONSTRUCTION SE 79-42-R March 18, 1980 ALJ - Review Granted Not Printed*	Secretary of Labor's filing of brief by mail 25 days after order granting his petition for discretionary review rather than within 20 days as required by 29 CFR §2700.72 is not grounds for vacation of direction for review since Secretary is entitled, pursuant to 29 CFR §2700.8(b), to five additional days when service is by mail.
29 CFR 2700.84	JAQUAYS MINING CORPORATION DENV 79-458-M December 16, 1980 ALJ - Final 12/80 p3608	
30 CFR 15.24(b)	PEABODY COAL COMPANY VINC 78-52-P June 29, 1978 ALJ - Final Unbound	
30 CFR 18.2	PEABODY COAL COMPANY VINC 78-52-P June 29, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 45	GENERAL PORTLAND, INC. DENV 79-277-PM September 26, 1980 ALJ - Final 9/80 p2688*	Citations charging owner-operator with liability for violation committed by its independent contractor will be affirmed when citations were issued before new regulations which provide for citing contractors directly became effective because there is no evidence that rule was meant to be applied retroactively.
	OLD BEN COAL COMPANY VINC 79-119-P December 9, 1980 US APPEALS DC N/A*	Secretary did not abuse his discretion in proceeding under interim policy against owner-operator for violations of Federal Mine Safety and Health Act committed by independent contractor.
	THE PITTSBURG & MIDWAY COAL MINING COMPANY BARB 79-307-P February 8, 1980 ALJ - Final 2/80 p311	
30 CFR 45.6	SOUTHWESTERN ILLINOIS COAL CORPORATION LAKE 80-341 October 30, 1980 ALJ - Final 10/80 p3187	
30 CFR 48.3	COUNCIL OF THE SOUTHERN MOUNTAINS KENT 80-222-D October 3, 1980 ALJ - Review Denied 10/80 p2829	
30 CFR 50.2	HECLA MINING COMPANY DENV 79-199-PM November 15, 1979 ALJ - Final 11/79 p1872*	Citation charging that operator violated 30 CFR §50.10 because it failed to immediately report accident to MSHA when victim was taken to hospital or moved to intensive care unit is vacated, since Secretary of Labor failed to establish that accident in question was "reportable accident" as defined in 30 CFR §50.2.
30 CFR 50.2(h)	HELVETIA COAL COMPANY PITT 79-12-P March 14, 1979 ALJ - Review Denied 3/79 p103*	Occurrences which are not "accidents" within definition of 30 CFR §50.2(h) are not required to be recorded as accidents on MSHA Form 7000-1 under 30 CFR §50.20.

Section of Act/Reg	Case Identification	Summary
30 CFR 50.9-2	ATLANTIC CEMENT COMPANY, INC. YORK 79-10-M October 10, 1980 ALJ - Final 10/80 p2910*	
30 CFR 50.9-11	MAUMEE HAULERS & EXCAVATORS LAKE 80-192-M December 18, 1980 ALJ - Final 12/80 p3708*	Federal Mine Safety and Health Act does not apply to machine which was out of service and in inoperable condition at time inspector issued citation; therefore citation is vacated.
30 CFR 50.10	CLIMAX MOLYBDENUM COMPANY WEST 79-301-M July 25, 1980 ALJ - Final 7/80 p1967*	Citation for violation of 30 CFR §50.10 for failure to immediately notify Mine Safety and Health Administration of accident on mine property must be vacated when evidence establishes that injury sustained was "serious" but not "life threatening," because regulation requires reporting only of "accident," which has been defined as "injury which has reasonable potential to cause death."
	HECLA MINING COMPANY DENV 79-199-PM November 15, 1979 ALJ - Final 11/79 p1872*	Although 30 CFR §50.10,which requires reporting of accidents to MSHA, was not promulgated as regulation pursuant to 1977 Act, it was applicable mandatory standard in June 1978, since, under transfer provisions of 1977 Act, Part 50, which was promulgated under Metal Act, remained in effect until such time as Secretary of Labor issued new or revised standard. Citation charging that operator violated 30 CFR §50.10 because it failed to immediately report accident to MSHA when victim was taken to hospital or moved to intensive care unit is vacated, since Secretary of Labor failed to establish that accident in question was "reportable accident" as defined in 30 CFR §50.2.

Section of Act/Reg	Case Identification	Summary
30 CFR 50.10	HELVETIA COAL COMPANY PENN 79 165-R April 29, 1980 ALJ - Review Denied 4/80 p1011*	Operator is required by 30 CFR §50.10 to report accident to MSHA when methane readings in section of mine increase within period of five days to between five to ten percent as this condition constitutes an "inundation of a mine by a liquid or gas."
	LONE STAR STEEL COMPANY DENV 79-291-PM November 14, 1980 ALJ - Review Denied 11/80 p3282	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-537-P June 29, 1979 ALJ - Final 6/79 p706	
30 CFR 50.12	CLIMAX MOLYBDENUM COMPANY WEST 79-301-M July 25, 1980 ALJ - Final 7/80 p1967*	Provisions of 30 CFR §50.12 do not require operator to preserve site of accident until it is determined whether accident is immediately reportable because, while operator may be acting at its peril in not preserving site if it develops that injury does have reasonable potential for death, necessity to preserve does not occur until reasonable potential for death has arisen.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-537-P June 29, 1979 ALJ - Final 6/79 p706	
30 CFR 50.14-1	ATLANTIC CEMENT COMPANY, INC. YORK 79-10-M October 10, 1980 ALJ - Final 10/80 p2910*	
30 CFR 50.20	CALICO ROCK MILLING, INC. DENV 79-219-PM October 17, 1979 ALJ - Final 10/79 p1621	

Section of Act/Reg	Case Identification	Summary
30 CFR 50.20	HELVETIA COAL COMPANY PITT 79-12-P March 14, 1979 ALJ - Review Denied 3/79 p103*	Occurrences which are not "accidents" within definition of 30 CFR §50.2(h) are not required to be recorded as accidents on MSHA Form 7000-1 under 30 CFR §50.20.
30 CFR 50.30	CASH & CARRY GRAVEL, INC. LAKE 80-48-M November 13, 1980 ALJ - Final 11/80 p3271	
30 CFR 50.41	SEWELL COAL COMPANY HOPE 79-274 July 6, 1979 ALJ - Final 7/79 p864*	Neither 1977 Act nor 30 CFR §50.41 authorizes Secretary of Labor to inspect or copy mine operator's personnel records, which contain information both related and not related to reporting requirements of 30 CFR Part 50, without obtaining valid search warrant.
30 CFR 55.2	READYMIX SAND & GRAVEL COMPANY WEST 79-66-M December 5, 1979 ALJ - Final 12/79 p1987*	Definition of "mill" in Parts 55 and 56 of 30 CFR, which requires that mill be "at" mining pit, does not put limitation on Secretary of Labor's jurisdication over preparation plant since Secretary indicated in interagency agreement that he has retained jurisdication over milling facilities and company was cited for violation of 1977 Act, not for violation of any mandatory standard.
30 CFR 55.3-5	PACER CORPORATION DENV 79-97-PM April 7, 1980 ALJ - Final 4/80 p811*	Operator who does not place barricades in area of loose overhanging rocks and allows men to work near this area exposes them to hazard of falling rocks and violates requirement of 30 CFR §55.3-5. By removing barricades and allowing men to work in area which had previously been subject to order of withdrawal and abatement because of loose rock and dangerous overhang, and dangerous condition is still present, operator is in violation of 30 CFR §55.3-5.

Section of Act/Reg	Case Identification	Summary
30 CFR 55.4-18	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Storage of oxygen cylinders with oil and grease cans in large open room that had two ten-by-fifteen foot areas screened off by wire mesh constituted violation of 30 CFR §55.4-18.
30 CFR 55.5-1 (a)	PACER CORPORATION DENV 79-257-PM August 28, 1979 ALJ - Review Granted/ Vacated 8/79 p1081*	Silica dust samples of five miners that show 3- to 14-percent variance between lowest and highest reading of percentage of silica raise possibility of inaccuracy of sampling methods and are inadequate evidence to support finding of violation of requirement of 30 CFR §55.5-1(a) that exposure to airborne contaminants not exceed threshold limit values.
30 CFR 55.5-5	N L INDUSTRIES, INC. YORK 79-9-M October 20, 1980 ALJ - Final 10/80 p3040	
30 CFR 55.6-5	HELDENFELS BROTHERS, INC. CENT 79-280-M October 29, 1980 ALJ - Final 10/80 p3173*	Existence of brush and trees within 25 feet of explosives magazine and blasting agents storage, creating fire and explosion hazard, violates 30 CFR 55.6-5, which requires that areas surrounding magazines and facilities for storage of blasting agents are to be kept clear of rubbish brush, dry grass, or trees for distance of not less than 25 feet.
30 CFR 55.6-112	HELDENFELS BROTHERS, INC. CENT 79-280-M October 29, 1980 ALJ - Final 10/80 p3173*	Safety standard, 30 CFR 55.6-112, requiring that burning rate of safety fuse in use at any time is to be measured, posted in conspicuous locations, and brought to attention of all men concerned with blasting, is violated when burning rate of safety fuse in Strawn cap magazine was not known or posted, thereby creating hazard of not being able to get far enough away from blast before it goes off.

Section of Act/Reg	Case Identification	Summary
30 CFR 55.7-5	FEDERAL AMERICAN PARTNERS WEST 80-219-RM November 25, 1980 ALJ - Final 11/80 p3416	
30 CFR 55.9	CLIMAX MOLYBDENUM COMPANY WEST 79-325-RM February 19, 1980 ALJ - Final 2/80 p470*	Facts that truck driver had no trouble with braking systems on haulage rig on previous shift, that dynamic braking system must have been working when rig negotiated curve before accident occurred, and skid marks indicated heavy use of mechanical braking system, warrant vacation of citation alleging operator's unwarrantable failure to maintain brakes.
30 CFR 55.9-2	N L INDUSTRIES, INC. YORK 79-9-M October 20, 1980 ALJ - Final 10/80 p3040	
	PHELPS DODGE CORPORATION DENV 79-561-PM August 27, 1980 ALJ - Final 8/80 p2385*	Operator's failure to repair low gear of Pettibone Multicrane before equipment was used violates 30 CFR 55.9-2 which requires that equipment defects affecting safety be corrected before equipment is used, because use of vehicle on steep inclines without low gear would have been hazardous, and there was nothing to prevent use of vehicle on such inclines.
	PHELPS DODGE CORPORATION WEST 79-67-M December 11, 1979 ALJ - Final 12/79 p2018*	Company violated requirement of 30 CFR §55.9-2 that haulage equipment be made safe before use since repairman returned to service truck with loose lug nuts.
	THE HANNA MINING COMPANY LAKE 79-101-M June 17, 1980 ALJ - Review Granted 6/80 p1446*	

Section of Act/Reg	Case Identification	Summary
30 CFR 55.9-3	PHELPS DODGE CORPORATION DENV 79-561-PM August 27, 1980 ALJ - Final 8/80 p2385*	Loss of power-assisted braking, whether sporadic or complete, on Pettibone Multicrane makes operation of vehicle unsafe because it is large vehicle of substantial weight and is driven on roads with steep grades which require full braking power, and operator's failure to provide adequate brakes violates 30 CFR 55.9-3.
30 CFR 55.9-7	EXCEL MINERAL COMPANY WEST 79-173-M December 5, 1979 ALJ - Final 12/79 p2001	
	HARBORLITE CORPORATION DENV 79-501-PM August 13, 1980 ALJ - Final 8/80 p2236*	Use of walkway side of conveyor belt only when maintenance is being performed is not determinative of existence of violation of 30 CFR 55.9-7; accordingly, missing portion of guardrail and failure to install stop cord on walkway side of oversize conveyor constitute violation of standard.
	MADISON GRANITE COMPANY DENV 79-114-PM November 28, 1979 ALJ - Final 11/79 p1906	
30 CFR 55.9-11	THE HANNA MINING COMPANY LAKE 79-101-M June 17, 1980 ALJ - Review Granted 6/80 p1446*	
30 CFR 55.9-22	CLEVELAND CLIFFS IRON COMPANY VINC 78-300-M September 8, 1978 ALJ - Final Unbound	
	CLEVELAND CLIFFS IRON COMPANY VINC 79-68-M December 3, 1979 ALJ - Review Granted 12/79 p1965	

Section of Act/Reg	Case Identification	Summary
30 CFR 55.9-22	EXCEL MINERAL COMPANY WEST 79-173-M December 5, 1979 ALJ - Final 12/79 p2001	
	HELDENFELS BROTHERS, INC. CENT 79-280-M October 29, 1980 ALJ - Final 10/80 p3173*	Eighteen-inch bermis insufficient to restrain vehicles using roadway elevated about 20 feet with base of 10 feet and therefore violates requirement of 30 CFR 55.9-22 that berms or guards be provided on outer bank of elevated roadways. Use of berm, 12 to 20 inches high, on roadway approximately 600 feet long and inclined at angle of 11 degrees by 623 Caterpillar, with wheels five heet high and axle two and one-half feet high, and 631 Caterpillar scraper, with wheel height of approximately six feet and axle height of three feet, violates 30 CFR 55.9-22.
	HELDENFELS BROTHERS, INC. DENV 79-575-PM April 8, 1980 ALJ - Review Denied/ Appealed 4/80 p851*	"Rule of thumb" that berm must be as high as axle of largest vehicle using road will be applied to determine if there is violation of 30 CFR 55.9-22 which requires that berms or guards be provided on outer banks of elevated roadways.
30 CFR 55.9-24	HELDENFELS BROTHERS, INC. DENV 79-575-PM April 8, 1980 ALJ - Review Denied/ Appealed 4/80 p851*	Operators of mobile equipment must have full control of equipment while it is in motion as provided by 30 CFR 55.9-24 but management will not be found negligent when accident occurs if there is no evidence of mechanical defects, hazardous road conditions, or inadequate instruction to operators on use of equipment.
30 CFR 55.9-37	EXCEL MINERAL COMPANY WEST 79-173-M December 5, 1979 ALJ - Final 12/79 p2001	
	PHELPS DODGE CORPORATION CENT 79-188-M October 17, 1980 ALJ - Final 10/80 p2964*	Unattended truck which was parked on grade without wheels blocked or turned toward bank constitutes violation of 30 CFR 55.9-37 even though there was little chance of truck colliding into work area, because if unattended truck were struck it could hit another vehicle or person.

Section of Act/Reg	Case Identification	Summary
30 CFR 55.9-40 (c)	HELDENFELS BROTHERS, INC. CENT 79-280-M October 29, 1980 ALJ - Final 10/80 p3173*	Observance of oiler's helper on outside of Caterpillar scraper cab while oiler was moving machine around in maintenance shop yard, thereby creating hazard of falling from machine and being run over, establishes violation of 30 CFR 55. 9-40(c).
30 CFR 55.9-73	PHELPS DODGE CORPORATION DENV 79-561-PM August 27, 1980 ALJ - Final 8/80 p2385*	Provisions of 30 CFR 55.9-73 require that defective equipment which has been removed from service be tagged to prohibit further use until repairs are completed, and operator's failure to tag multicrane which had been removed from service because of defective brakes constitutes violation of standard.
30 CFR 55.11-1	THE HANNA MINING COMPANY LAKE 79-101-M June 17, 1980 ALJ - Review Granted 6/80 p1446*	Operator violates 30 CFR §55.11-1, which requires that safe means of access be provided and maintained to all working places, when stairs to drill are distorted and loose and stairway did not completely retract because of distortion, which kept bottom stair 24-28 inches from ground.
30 CFR 55.11-2	EXCEL MINERAL COMPANY WEST 79-173-M December 5, 1979 ALJ - Final 12/79 p2001	
	THOR MINING COMPANY BARB 79-311-PM June 24, 1980 ALJ - Final 6/80 p1592*	Handrails are required around outer edge of storage tank atop which workers must go periodically, because function of tank brings it within definition of elevated walkway and 30 CFR §55.11-2 requires handrails be provided on elevated walkways.
30 CFR 55.11-12	THOR MINING COMPANY BARB 79-311-PM June 24, 1980 ALJ - Final 6/80 p1592*	Opening at pump sump which is not protected by railings, barriers, or covers violates 30 CFR §55.11-12, which requires that openings near travelways through which men may fall be protected by railings, when evidence establishes that, by failing to designate safe area for travel near pump sump, company tacitly designated entire area as travelway and travelway was used regularly to conduct inspections and repair activities.

Section of Act/Reg	Case Identification	Summary
30 CFR 55.11-16	THE HANNA MINING COMPANY LAKE 79-101-M June 17, 1980 ALJ - Review Granted 6/80 p1446*	Accumulation of ice on botton of stairway in mine violates 30 CFR §55.11-16, which requires that walkways be cleared of snow and ice as soon as practicable, when it can be inferred that accumulation existed for some time because it was caused by drip from pipe and was discovered more than three hours after shift had begun.
30 CFR 55.11-27	EXCEL MINERAL COMPANY WEST 79-173-M December 5, 1979 ALJ - Final 12/79 p2001	
	HARBORLITE CORPORATION DENV 79-501-PM August 13, 1980 ALJ - Final 8/80 p2236*	Failure to install handrail on west side of elevated platform at second floor of mill constitutes violation of 30 CFR 55.11-27 despite agreement by operator and Secretary that platform was not normal traffic area; since operator's official testified that platform was used occasionally to gain access to screen loader, platform is "working platform" within definition of 30 CFR 55.11-27
	THE HANNA MINING COMPANY LAKE 79-101-M June 17, 1980 ALJ - Review Granted 6/80 p1446*	Taking handrail off travelway and using it as handrail for working platform when platform is in use does not comply with provisions of 30 CFR §55.11-27 which require that working platforms be provided with handrail.
30 CFR 55.12-8	THOR MINING COMPANY BARB 79-311-PM June 24, 1980 ALJ - Final 6/80 p1592*	Citation for violation of 30 CFR §55.12-8, which requires installation of bushings to provide adequate insulation of power wires, must be vacated when allegations in citation are confined to absence of junction box, and there is no indication that operator was informed that absence of required bushings was basis for citation.

Section of Act/Reg	Case Identification	Summary
30 CFR 55.12-13	DUVAL CORPORATION WEST 79-196-M July 29, 1980 ALJ - Final 7/80 p1976*	Operator's use of permanently spliced cable which lacked bonded outer jacket constitutes violation of 30 CFR 55.12-13, because evidence established that outer jacket was loose and fact that five cables bound by cable were individually wrapped and sealed does not relieve operator of its duty under standard to make sure its power cables are well bonded.
30 CFR 55.12-14	ERIE MINING COMPANY DENV 79-23-M September 29, 1980 ALJ - Final 9/80 p2717	
30 CFR 55.12-16	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Requirement under 30 CFR §55.12-16 that electrical equipment be de-energized before work is done on equipment applies to "electrical equipment" and "mechanical" work done on it and does not make distinction between "electrical" and "mechanical" equipment. Failure to de-energize drum dryer while cleaning door of screw conveyor was violation of 30 CFR §55.12-16, even though 30 CFR §55.14-29 permits necessary machinery motion, since machine motion was not required for door-cleaning or changing of blades.
30 CFR 55.12-18	AMERICAN COLLOID COMPANY CENT 79-152-M June 20, 1980 ALJ - Final 6/80 p1546*	Operator violates 30 CFR §55.12-18, which requires that principal power switches be labeled to show which units they control, when control panel with eight disconnect switches has dust covering some switches so that labeling could not be seen or read.
30 CFR 55.12-28	MADISON GRANITE COMPANY DENV 79-114-PM November 28, 1979 ALJ - Final 11/79 p1906	
30 CFR 55.12-30	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Operator's lack of knowledge of broken conduit at damper valve of dryer is defense to violation of 30 CFR §55.12-30 because standard only requires that dangerous conditions found by operator be corrected before electrical equipment is energized.

Section of Act/Reg	Case Identification	Summary
30 CFR 55.12-30	UNITED STATES STEEL CORPORATION WEST 80-12-M September 9, 1980 ALJ - Review Denied 9/80 p2555*	Risk of injury from electric grinder with two grinding wheels measuring approximately 16 inches in diameter and located in dozer and loader repair area is too remote to be considered "potentially dangerous condition" within meaning of 30 CFR 55.12-30 where grinding wheels are well guarded with cast iron guard that completely surrounds each wheel, except for small opening where grinding takes place.
30 CFR 55.12-32	PHELPS DODGE CORPORATION CENT 79-188-M October 17, 1980 ALJ - Final 10/80 p2964*	Operator's failure to keep electrical leads on 120-volt AC-DC converter insulated constitutes violation of 30 CFR 55.12-32, and operator's argument that machine was used only for testing purposes and required low current is not relevant to existence of violation but to gravity of violation.
30 CFR 55.12-34	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Failure to provide guards on lights along walkway and within striking distance of persons wearing hardhats constituted violation of requirement of 30 CFR §55.12-34 that lights that present burn or shock hazard be guarded, even though evidence failed to establish precise number of unguarded bulbs.
30 CFR 55.12-45	KENNECOTT COPPER CORPORATION DENV 79-457-M August 8, 1979 ALJ - Final 8/79 p1009	
30 CFR 55.12-71	DUVAL CORPORATION WEST 79-194-M March 4, 1980 ALJ - Rev Granted/ Dismissed 3/80 p641	

Section of Act/Reg	Case Identification	Summary
30 CFR 55.14	HARBORLITE CORPORATION DENV 79-501-PM August 13, 1980 ALJ - Final 8/80 p2236*	Assertions that mill was previously inspected by federal and state inspectors but operator was not cited for failure to guard certain equipment, in violation of 30 CFR 55.14, and that operator requested courtesy visits prior to enactment of 1977 Act but Mine Safety and Health Administration never sent representative to perform inspection, are not a defense to violation of 30 CFR 55.14.
30 CFR 55.14-1	DUVAL CORPORATION WEST 79-196-M July 29, 1980 ALJ - Final 7/80 p1976*	Citation for violation of 30 CFR 55.14-1, for failure to adequately guard pinch point between belt drive and pulley on back-up water pump, is vacated because operator established that pump was guarded adequately by its location and design and that pinch point could not be contacted except intentionally.
	EXCEL MINERAL COMPANY WEST 79-173-M December 5, 1979 ALJ - Final 12/79 p2001	
	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Failure to provide cover on screw conveyor constituted violation of 30 CFR §55.14-1 even though location of conveyor was not in normal operating area because employee would be in area for maintenance purposes and could entangle arm in open screw conveyor. Failure to install guard on end shaft on bin discharge driver of calciner, which presented possibility of injury to maintenance employees, constituted violation of 30 CFR §55.14-1.
	N L INDUSTRIES, INC. YORK 79-9-M October 20, 1980 ALJ - Final 10/80 p3040	

Section of Act/Reg	Case Identification	Summary
30 CFR 55.14-1	THE HANNA MINING COMPANY LAKE 79-101-M June 17, 1980 ALJ - Review Granted 6/80 p1446*	Operator violates 30 CFR §55.14-1, which requires guarding of exposed moving parts, when couplings on five-and-one-half-foot drive shafts have exposed studs or screws, and shafts are adjacent to regularly used walkway.
	THOR MINING COMPANY BARB 79-311-PM June 24, 1980 ALJ - Final 6/80 p1592*	Operator violates 30 CFR §55.14-1, which requires guarding of exposed moving parts which may be contacted by persons, when head pulley and tail pulley on conveyor belts are inadequately guarded and there are exposed pinch points in each area which could cause physical harm if contacted by persons.
30 CFR 55.14-4	AMERICAN COLLOID COMPANY CENT 79-152-M June 20, 1980 ALJ - Final 6/80 p1546*	Storing gasoline in unmarked plastic milk container violates 30 CFR §55.4-4 which requires that flammable liquids be stored in accordance with standards approved by Mine Safety and Health Administration and that small quantities of flammable liquids be properly labeled.
30 CFR 55.14-6	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Loose guard over metal saw's drive belts constitued violation of 30 CFR §55.14-6 even though equipment was not in operation when inspector observed guard, since inspector's testimony revealed that it is more probable than not that employee was using equipment immediately prior to issuance of citation.
	THE HANNA MINING COMPANY LAKE 79-101-M June 17, 1980 ALJ - Review Granted 6/80 p1446*	Guards on head pulley of pellet loadout belt which are not secured in mounting brackets and guards on drive assembly which are not secured because of missing and loose bolts violate provisions of 30 CFR §55.14-6, which requires that guards be secured while machines are operating.

Section of Act/Reg	Case Identification	Summary
30 CFR 55.14-26	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Missing glass and bent indicator needle on pressure gauges on oxygen and acetylene cylinders did not constitute violation of 30 CFR §55.14-26 since cylinders have safety device that opens and vents gases should pressure exceed permissible levels, making gauges unnecessary for safety standpoint.
30 CFR 55.14-29	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Failure to de-energize drum dryer while cleaning door of screw conveyor was violation of 30 CFR §55.12-16, even though 30 CFR §55.14-29 permits necessary machinery motion, since machine motion was not required for door-cleaning or changing of blades.
30 CFR 55.14-45	DUVAL CORPORATION WEST 79-196-M July 29, 1980 ALJ - Final 7/80 p1976*	Citation for violation of 30 CFR 55.14-45, for allowing employee to weld on teeth of shovel bucket without using curtain to protect others from harm of light flashes, is vacated because welding operation was shielded adequately on three sides by shovel bucket and on forth side by welder.
30 CFR 55.15-2	MADISON GRANITE COMPANY DENV 79-114-PM November 28, 1979 ALJ - Final 11/79 p1906	
30 CFR 55.15-4	THE ANACONDA COMPANY WEST 79-136-M June 13, 1980 ALJ - Final 6/80 p1418*	Citation for violation of 30 CFR & 55.15-4, which requires workers to wear safety glasses when in area of mine where there is hazard which could cause injury to unprotected eyes, must be vacated when only evidence MSHA has of violation is that metal filings can be thrown "several" feet by operating machine, and workers who are 22 feet away from machine are not wearing safety glasses. Only nominal penalty will be assessed against employer for violation of 30 CFR &55.15-4 when employee is observed working without safety glasses and company policy requires safety glasses be worn at all times, as employee's misconduct was unforeseeable and unpreventable.

Section of Act/Reg	Case Identification	Summary
30 CFR 55.15-4	THE ANACONDA COMPANY WEST 79-316-M June 13, 1980 ALJ - Final 6/80 p1434*	Citation for violation of 30 CFR §55.15-4, which requires workers to wear safety glasses when in area of mine where there is hazard which could cause injury to unprotected eyes, must be vacated when only evidence MSHA has of violation is that metal filings can be thrown "several" feet by operating machine, and workers who are 22 feet away from machine are not wearing safety glasses.
30 CFR 55.15-5	AMERICAN COLLOID COMPANY CENT 79-152-M June 20, 1980 ALJ - Final 6/80 p1546*	Operator violates 30 CFR §55.15-5 by allowing employee to work on slippery conveyor belt which is 10 to 12 feet above ground without wearing safety belt, as regulation requires employees to wear safety belts when working in area where there is danger of falling.
	LONE STAR STEEL COMPANY DENV 79-291-PM November 14, 1980 ALJ - Review Denied 11/80 p3282	
	PHELPS DODGE CORPORATION CENT 79-188-M October 17, 1980 ALJ - Final 10/80 p2964*	Operator violated 30 CFR 55.15-5 because employee was observed walking on crane rail platform, 16 feet above floor, without using safety belt and line, and existence of handrails, walls on three sides, and availability of purlin to hold onto does not eliminate danger.
30 CFR 55.16-9	THE ANACONDA COMPANY WEST 79-128-M June 13, 1980 ALJ - Review Granted 6/80 p1414	
	THE ANACONDA COMPANY WEST 79-130-M June 13, 1980 ALJ - Review Granted 6/80 p1435	
	THE ANACONDA COMPANY WEST 79-137-M June 13, 1980 ALJ - Review Granted 6/80 p1423	

Section of Act/Reg	Case Identification	Summary
30 CFR 55.17-1	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Facts that no employees were working in rail load-out area at time of inspection and inspector did not observe either tank car movement or switching activities in area precludes finding of violation of 30 CFR §55.17-1, which requires sufficient illumination in work areas. Citation for violation of 30 CFR §55.17-1 for inadequate illumination at rail load-out area construed to be walkway is vacated since evidence shows that residual lighting from surrounding buildings provided enough illumination to permit man to walk through area without use of flashlight. Absence of enough objective evidence to prove that there was inadequate illumination in warehouse and presence of 14 lights in warehouse precludes finding of violation of 30 CFR §55.17-1, which requires sufficient illumination in work areas. Fact that inspector's assistant almost fell into hole in warehouse floor and inspector could not see hole clearly establishes inadequate illumination in that one location of warehouse, in violation of 30 CFR §55.17-1.
	KAISER STEEL CORPORATION DENV 79-245-PM March 17, 1980 ALJ - Final 3/80 p708*	Inspector's failure to determine whether existing lighting was sufficient by conducting light meter test and determining amount of existing lighting and evidence that existing light permitted detection of any obstacles on walkways preclude finding of violation
30 CFR 55.18-20	UNITED STATES STEEL CORPORATION WEST 80-12-M September 9, 1980 ALJ - Review Denied 9/80 p2555*	"Hazardous" means "exposed to or involving danger; perilous; risky"; accordingly, hazardous condition within meaning of 30 CFR 55.18-20 endangers safety of employee washing tripper gallery floor where openings in floor are about 10 feet long due to absence of grizzely bars and there is possibility of employee slipping and falling into opening.

Section of Act/Reg	Case Identification	Summary
30 CFR 55.18-20		To "communicate" means "to bestow, convey, make known, recount, impart; to give by way of information"; accordingly, employee washing tripper gallery floor where hazardous condition exists is unable to communicate with others as required by 30 CFR 55.18-20, despite existence of paging system and elevator alarm bell, since paging system was not operable at time of inspection and there was no evidence that elevator would always be available.
30 CFR 55.20-3	FREEPORT KAOLIN COMPANY BARB 79-219-PM January 30, 1980 ALJ - Final 1/80 p233*	Holes four inches wide in floor of walkway on top of storage tank constituted violation of requirement of 30 CFR §55.20-3 that floors be kept as free of holes as practicable, since holes performed no essential function and it was practicable to keep workway free of them.
	KAISER STEEL CORPORATION DENV 79-245-PM March 17, 1980 ALJ - Final 3/80 p708*	Tripping hazards and accumulations of encrusted materials and lubricating grease in balcony area of conveyor belt tunnels, which were not normal work areas, constituted violations of requirement under 30 CFR §§55.20-3 and 55.20-3(a) that workplaces be kept clean and orderly.
30 CFR 55.20-3 (a)	UNITED STATES STEEL CORPORATION WEST 80-12-M September 9, 1980 ALJ - Review Denied 9/80 p2555*	Location of up to four candy wrappers in or near about 30 wooden blocks piled in area used to dry electric motors does not constitute failure to keep workplace clean and orderly in violation of 30 CFR 55.20-3(a), particularly when there was no evidence as to how long paper might have been there.
30 CFR 55.55-5 (sic)	LONE STAR STEEL COMPANY DENV 79-291-PM November 14, 1980 ALJ - Review Denied 11/80 p3282	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.3-2	AFFILIATED AGGREGATES CENT 80-90-M August 27, 1980 ALJ - Final 8/80 p2454*	Citation issued for violation of 30 CFR 56.3-2, which requires that loose, unconsolidated materials be stripped for safe distance; must be vacated when citation was issued as result of visual observation and there was no way to tell whether or not material was loose, and operator established that one big stone was not loose and could not be removed by normal scaling or blasting operations.
30 CFR 56.3-5	EATON SAND & GRAVEL COMPANY PIKE 79-119-PM June 25, 1980 ALJ - Final 6/80 p1618*	Employee working on machine located near highway violates 30 CFR §56.3-5, which prohibits working near or under dangerous banks, and operator is liable for violation even though employee was instructed not to work on machine until it was pulled away from wall, because operator's liability is not conditioned upon fault.
	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
	OTTAWA SILICA COMPANY WILK 79-69-PM December 28, 1979 ALJ - Review Denied 12/79 p2161	
30 CFR 56.3-12	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
30 CFR 56.4-11	OTTAWA SILICA COMPANY WILK 79-69-PM December 28, 1979 ALJ - Review Denied 12/79 p2161	
30 CFR 56.4-23	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.4-24 (c)	CAROLINA STALITE COMPANY BARB 79-319-P December 2, 1980 ALJ - Review Granted 12/80 p3508	
30 CFR 56.4-29	J P BURROUGHS & SON, INC. LAKE 80-173-M November 13, 1980 ALJ - Final 11/80 p3266*	Operator violates requirement of 30 CFR 56.4-29 that fire extinguisher be "immediately available at the site" because extinguisher was on truck on level below work area and could be reached only by going down ladder and traveling 30 or more feet around or under conveyor.
30 CFR 56.4-33	CEMENT DIVISION, NATIONAL GYPSUM COMPANY VINC 79-154-PM December 26, 1979 ALJ - Review Granted 12/79 p2115	
30 CFR 56.5-1 (a)	ATLANTIC CEMENT COMPANY, INC. YORK 80-34-M October 29, 1980 ALJ - Final 10/80 p3155*	Operator violates 30 CFR 56.5-1(a) when crane operator's exposure to silica-bearing contaminants exceeds limits established by standard, and operator may not use affirmative defense of 30 CFR 56.5-5, which allows employees to work for reasonable time in excessive concentrations of airborne contaminants if provided respiratory protection, because employee was not protected by appropriate respiratory equipment even though equipment was clearly available.
	SUPERIOR SAND & GRAVEL, INC. LAKE 79-231-M June 3, 1980 ALJ - Final 6/80 p1308*	Operator's failure to abate violation of 30 CFR §56.5-1(a) within prescribed time when it was discovered that employee was exposed to levels of respirable dust in excess of those prescribed in standard justifies issuance of withdrawal order, and operator's subsequent failure to comply with withdrawal order constitutes very serious violation of Federal Mine Safety and Health Act of 1977.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.5-50	CLIMAX MOLYBDENUM COMPANY DENV 78-541-M December 16, 1980 ALJ - Final 12/80 p3617	
	CLIMAX MOLYBDENUM COMPANY DENV 79-122-M December 16, 1980 ALJ - Final 12/80 p3613	
	CONROCK COMPANY WEST 79-373-RM February 12, 1980 ALJ - Final 2/80 p398*	Use of personal protective equipment such as ear plugs satisfies requirement under 30 CFR §56.5-50 that workers not be exposed to excessive noise concentrations but only after administrative and engineering controls have failed to reduce noise.
	DAVID PASULA PITT 78-458 October 14, 1980 RC - Appealed 10/80 p2786*	Miner's refusal to continue to operate continuous mining machine until noise level test was made because he was suffering from effects of loud noise level of machine is activity protected by discrimination clause, Section 105 (c)(1), of Federal Mine Safety and Health Act of 1977, because his suffering was actual, not speculative, and his view that he was exposed to unhealthful and excessive noise levels was reasonable and was supported by objective evidence.
	HILO COAST PROCESSING COMPANY DENV 79-50-M July 13, 1979 ALJ - Review Granted 7/79 p895	Citations for violation of noise standard applicable to sand, gravel, and crushed stone operations must be vacated because standard, 30 CFR §56.5-50, does not allow primary use of personal protection and leaves mine operator to guess as to how much money must be spent on other means of noise reduction before use of personal protection is appropriate.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.5-50	INDEPENDENT CEMENT CORPORATION YORK 79-92-M August 21, 1980 ALJ - final 8/80 p2329*	Although it is preferable for Mine Safety and Health Administration to charge violations in language of cited standard, its use of equivalent alternative terminology, having same technical meaning and well enough known in industry to enable those within field to understand and apply terminology, provides requisite notice to operator of violations charged. Provisions of 30 CFR 56.5-50 which concern maximum level of noise exposure allowed do not require that dosimeter used by Mine Safety and Health Administration to obtain noise-level readings be certified by chain of certification to standards maintained by National Bureau of Standards, and operator's argument that MSHA failed to prove that dosimeters were sufficiently accurate must be rejected when MSHA provides evidence that periodic calibration tests were made to insure accuracy of dosimeter.
	MAUDLIN CONSTRUCTION COMPANY CENT 80-114-M December 18, 1980 ALJ - Final 12/80 p3712*	Citation issued for violation of 30 CFR 56.5-50 (impermissible noise exposure) is vacated when dosimeter used for noise level test was calibrated 27 days before test was performed; dosimeter is very sensitive piece of equipment easily affected by temperature changes, movement, and other outside influences.
	ROCKITE GRAVEL COMPANY LAKE 80-130-M December 4, 1980 ALJ - Review Denied 12/80 p3543*	
	SIERRA READY MIX & CONTRACTING COMPANY WEST 79-250-M May 13, 1980 ALJ - Final 5/80 p1086	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.5-50 (a)	AFFILIATED AGGREGATES CENT 80-90-M August 27, 1980 ALJ - Final 8/80 p2454*	Provisions of 30 CFR 56.5-50(a) establish maximum permissible level of noise exposure in sand and gravel operations, and operator violates standard when miners are exposed to levels above maximum and hearing protection is not being used, but fact that operator had constructed sound-resistant cabs in cited area, which at one time had reduced noise exposure to permissible levels, and had made reasonable efforts to insure that miners were wearing hearing protection is taken into account in assessing civil penalty.
30 CFR 56.5-50 (b)	GILL QUARRIES, INC. WILK 79-35-PM July 2, 1979 ALJ - Final 7/79 p805	
30 CFR 56.5-60	ATLANTIC CEMENT COMPANY, INC. YORK 80-34-M October 29, 1980 ALJ - Final 10/80 p3155*	
30 CFR 56.6-20 (e)	AFFILIATED AGGREGATES CENT 80-90-M August 27, 1980 ALJ - Final 8/80 p2454*	Explosive magazine, which is constructed of metal and which is not equipped with electrical ground, creates hazard to persons working in area in case of electrical storm and violates provisions of 30 CFR 56.6-20(e).
	GALLAGHER & BURK, INC. DENV 79-517-PM November 25, 1980 ALJ - Final 11/80 p3399*	Operator violates requirement of 30 CFR 56.6-20(e), that magazines be properly grounded, when metal magazines are found resting on ground and are not electrically bonded or grounded because lightning or stray electrical currents could cause explosion in magazines resulting in serious injury or death to employees.
30 CFR 56.6-44	BORSBERRY CONSTRUCTION COMPANY, INC. CENT 79-174-M July 2, 1980 ALJ - Final 7/80 p1724	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.9-2	ALLIED PRODUCTS COMPANY SE 79-46-PM September 4, 1980 ALJ - Review Denied/ Appealed 9/80 p2517*	Operator, which allows front-end loader to be operated when it knows that vehicle had been leaking hydraulic fluid and had not been repaired, violates provisions of 30 CFR 56.9-2 which requires that equipment defects affecting safety be corrected before equipment is used, because loader's driving and bucket functions were adversely affected by leak and defect contributed to fatal accident.
	ATLANTIC CEMENT COMPANY, INC. YORK 79-10-M October 10, 1980 ALJ - Final 10/80 p2910*	Operator violates requirement of 30 CFR 56.9-2, that equipment defects affecting safety be corrected before use, where Caterpillar Model 773 haul truck was operated with inoperable automatic reverse signal, and operator's argument, that use of signal light system to aid truck driver in backing up was sufficient alternative, is rejected because signal light system was not used in all areas where trucks backed up. Operator's argument, that 30 CFR 56.9-2 which requires that equipment defects affecting safety be corrected before use is so vague that its application to defective automatic backup alarm on lube truck would violate due process, is rejected because conscientious safety expert, seeking to prevent all hazards which are reasonably foreseeable, would easily recognize hazard created by nonfunctioning reverse signal alarm on equipment such as lube truck. Citation for violation of 30 CFR 56.9-2, issued because guardrail located on belt was damaged thereby leaving troughing idler exposed, is vacated where reliable testimony established that splice shack where alleged violation occurred was not used, that belt convey tender could only walk on side opposite damaged rail, and that rollers were replaced when belt was shut down.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.9-2	EVANSVILLE MATERIALS, INC. LAKE 80-195-M August 20, 1980 ALJ - Review Denied 8/80 p2321*	Evidence of substantial air leak in braking system of loader and drop in air pressure while brakes are applied with engine in operation renders brakes defective within meaning of 30 CFR 56.9-2; accordingly, operator's contention that loader could be stopped by dropping and dragging bucket or using transmission is rejected as defense since principal means of stopping loader was by activating brake pedal. Substantial air leak in braking system of loader constitutes nonserious violation of 30 CFR 56.9-2 where loader is used intermittently, in limited area, at speeds not exceeding 5 mph, no one is in danger of being struck by loader, operator is satisfied he can control loader, and there is no evidence that leak is due to defective mechanical parts.
	GROVE STONE & SAND COMPANY SE 79-57-M May 29, 1980 ALJ - Final 6/80 p1261*	Dismissal of citation for violation of 30 CFR §56.9-2, which provides that equipment defects affecting safety must be corrected before equipment is used, is justified when evidence supports finding that front-end loader had been checked prior to use and was not found defective, and loader's back-up alarm had become defective from having been splashed by mud while being used.
	HUDSON RIVER AGGREGATES, INC. YORK 80-13-M October 27, 1980 ALJ - Review Denied 10/80 p3119*	Operator's failure to correct defective condition of rusted cross sectional braces and rotted framework of sand conveyor violates requirement of 30 CFR 56.9-2 that equipment defects affecting safety be corrected before equipment is used.
	IDEAL BASIC INDUSTRIES-CEMENT DIVISION SE 79-16-M June 9, 1980 ALJ - Review Granted 6/80 p1352	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.9-2	MAUDLIN CONSTRUCTION COMPANY CENT 80-114-M December 18, 1980 ALJ - Final 12/80 p3712*	Operator violated 30 CFR 56.9-2 (equipment defects shall be corrected) because backup alarm of front end loader was inoperative, and fact that alarm was installed as additional safety feature and was not required by Act does not preclude application of standard where evidence shows that use of alarm affected safety.
	MEDUSA CEMENT COMPANY SE 79-75 May 15, 1980 ALJ - Final 5/80 p1105*	Badly worn steering control arm block on road grader does not violate provision of 30 CFR §56.9-2, which requires that "Equipment defects affecting safety shall be corrected before equipment is used," if it cannot be established that worn control arm was defective to point where it presented real safety hazard, as worn part, in and of itself, does not always affect safety.
	WELLS-LAMSON QUARRY COMPANY, INC. WILK 79-33-PM August 10, 1979 ALJ - Final 8/79 p1034	
30 CFR 56.9-3	CONCRETE MATERIALS, INC. YORK 80-36-M October 22, 1980 ALJ - Final 10/80 p3105*	Operator fails in constitutional due process challenge to 30 CFR 56.9-3 (powered mobile equipment shall be provided with adequate brakes) arguing that it fails to warn operators as to what is meant by "adequate brakes," because reasonably prudent person familiar with industry would know whether brakes were adequate and operator's own mechanic testified as to what he considered were adequate brakes. Operator violates requirement of 30 CFR 56.9-3 (failure to provide adequate brakes) where brakes on No. 2 Euclid haulage truck failed to stop or hold empty truck at coast speed on five-degree slope, truck continued to roll 60 or 70 feet before stopping, and operator's mechanic testified truck should have stopped within 12 feet.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.9-3	MEDUSA CEMENT COMPANY SE 79-27-M April 8, 1980 ALJ - Final 4/80 P819*	Inspector's expert testimony as to inadequacy of truck brakes after they had been tested by placing foot on brakes and then applying acceleration to truck is sufficient to establish prima facie case of violation of requirement of 30 CFR §56.9-3 of 1977 Act that powered mobile equipment be provided with adequate brakes.
30 CFR 56.9-7	ACME CONCRETE COMPANY DENV 79-123-PM December 18, 1979 ALJ - Final 12/79 p2066*	Failure to equip unguarded surge conveyor with walkway alongside with emergency stop device constituted violation of 30 CFR §56.9-7, since "walkway" is construed to be any place where miners could reasonably be expected to walk.
	AMERICAN SAND & GRAVEL COMPANY BARB 79-209-PM March 31, 1980 ALJ - Final 3/80 p763	
	CALICO ROCK MILLING, INC. DENV 79-219-PM October 17, 1979 ALJ - Final 10/79 p1621	
	CENTRAL PRE-MIX CONCRETE COMPANY DENV 79-62-PM June 7, 1979 ALJ - Final 6/79 p522*	"Do not enter while operating" sign and chain around conveyor prevents chained-off area from being walkway, thereby relieving operator from compliance with 30 CFR §56.9-7, which requires that unguarded conveyors with walkways contain an emergency stop cord.
	CLM CORPORATION VINC 79-153-PM August 7, 1980 ALJ - Final 8/80 p2149*	Area alongside unguarded conveyor belt which is used by one employee who stands and moves in area to clean along rollers qualifies as walkway, and fact that area is not routinely used as pathway by other employees is not basis for restricting definition of walkway; operator's failure to provide emergency stop cord along length of unguarded conveyor constitutes violation of 30 CFR 56.9-7.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.9-11	ACME CONCRETE COMPANY DENV 79-123-PM December 18, 1979 ALJ - Final 12/79 p2066*	Radial cracks in windshield of front-end loader constituted violation of 30 CFR §56.9-11, which does not specifically prohibit cracked windshields, but requires that windshields be maintained in good condition.
	GENERAL PORTLAND, INC. DENV 79-277-PM September 26, 1980 ALJ - Final 9/80 p2688*	Citation for violation of 30 CFR 56.9-11 which requires that vehicle cab windows be kept clean and in good condition must be vacated when evidence fails to prove that cited crack in windshield interfered with driver's vision or created some other hazard.
30 CFR 56.9-22	ALLIED PRODUCTS COMPANY SE 79-46-PM September 4, 1980 ALJ - Review Denied/ Appealed 9/80 p2517*	Operator violates provisions of 30 CFR 55.9-22 which requires that berms or guards be provided on outer bank of elevated roadways when berms along haulage road were washed out and were deliberately allowed to remain open for drainage, in view of obvious safety hazards, and where condition contributed to fatal accident because berm was not adequate to stop vehicle from going over side of road.
	BRUBAKER-MANN, INC. WEST 79-193-M January 29, 1980 ALJ - Final 1/80 p227*	Operator's failure to provide berms on elevated access road to diesel pump that had 25 foot drop off within six feet of pump constituted violation of 30 CFR §56.9-22 even though company abated citation and no accidents occurred on road.
	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
	J P BURROUGHS & SON, INC. LAKE 80-173-M November 13, 1980 ALJ - Final 11/80 p3266*	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.9-22	NORTHERN AGGREGATES, INC. WILK 79-144-PM May 7, 1980 ALJ - Final 5/80 p1065	
	ROCK VALLEY CEMENT BLOCK & TILE DENV 79-587-PM July 25, 1980 ALJ - Final 7/80 p1906*	Elevated roadway used by trucks which are removing and loading materials for dike construction must be provided with berms alongside outer edges, as required by 30 CFR 56.9-22, because removal of materials and construction of dike itself is integral part of mining process and such activity is subject to regulations of Federal Mine Safety and Health Act of 1977. Provisions of 30 CFR 56.9-22 which require that berms be provided alongside outer banks of elevated roadways applies to roadways which are used for short duration because potential hazard along unprotected roadway remains hazard whether it is of short or long duration, and operator violates standard by failing to provide berms alongside outer banks of elevated roadway which is used for hauling materials for dike construction project.
30 CFR 56.9-24	CAPITOL AGGREGATES, INC. DENV 79-163-PM April 14, 1980 ALJ - Review Granted 4/80 p869	
30 CFR 56.9-40 (a)	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
30 CFR 56.9-41	LONE STAR INDUSTRIES, INC. VA 80-67-M November 28, 1980 ALJ - Review Granted 11/80 p3440	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.9-54	NORTH AMERICAN SAND & GRAVEL COMPANY LAKE 79-51-M July 31, 1980 ALJ - Final 7/80 p2017*	Absence of berms at side of ramp leading up to hopper does not violate 30 CFR §56.9-54, which requires that berms or bumper blocks be installed to prevent overtravel and overturning at dumping locations, because standard does not require berms at side of ramp, and hopper would prevent overtravel in dumping area.
30 CFR 56.9-59	ALLIED PRODUCTS COMPANY SE 80-42-M August 27, 1980 ALJ - Final 8/80 p2407*	Railroad crossing located in production plant area is subject to provisions of 30 CFR 56.9-59 which require that public and permanent railroad crossings be posted with warning signs or be guarded when trains are passing, and operator violates regulation when hopper car is pushed across intersection and there are no warning signs or another employee guarding intersection.
30 CFR 56.9-71	CAPITOL AGGREGATES, INC. DENV 79-163-PM April 14, 1980 ALJ - Review Granted 4/80 p869	
	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
30 CFR 56.9-87	A J GILBERT CONSTRUCTION COMPANY DENV 78-566-PM April 5, 1979 ALJ - Review Denied 4/79 p161	
	ACME CONCRETE COMPANY WEST 79-214-M February 22, 1980 ALJ - Final 2/80 p515*	Operation of loaders without backup alarms or persons acting as observers violated 30 CFR §56.9-87 because operators' obstructed views exposed employees in cited area to hazard when workers left equipment.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.9-87	CALICO ROCK MILLING, INC. DENV 79-219-PM October 17, 1979 ALJ - Final 10/79 p1621	
	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
	FLORIDA CRUSHED STONE COMPANY BARB 78-648-PM March 28, 1979 ALJ - Final 3/79 p171	
	GALLAGHER & BURK, INC. DENV 79-517-PM November 25, 1980 ALJ - Final 11/80 p3399*	Operator's activity of loading stockpiled rock into commercial trucks is covered by Federal Mine Safety and Health Act of 1977 and mandatory safety standard, 30 CFR 56.9-87, which requires that heavy duty mobile equipment be provided with audible warning devices is violated when manually operated horn on loader does not function.
	IDEAL BASIC INDUSTRIES-CEMENT DIVISION SE 79-16-M June 9, 1980 ALJ - Review Granted 6/80 p1352	
	IDEAL CEMENT COMPANY BARB 79-61-PM October 3, 1979 ALJ - Final 10/79 p1506*	Citation for violation of 30 CFR §56.9-87, which requires backup alarm on mobile equipment, is vacated since inspector failed to ascertain that driver's view of rear of truck was obstructed by interviewing truck driver or positioning himself in driver's seat.
	J P BURROUGHS & SON, INC. LAKE 80-173-M November 13, 1980 ALJ - Final 11/80 p3266*	Operator violates requirement of 30 CFR 56.9-87 that heavy duty equipment be provided with audible warning devices when operator of front-end loader had obstructed rear view and alarm on wheel was not audible above surrounding noise when loader was in operation.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.9-87	JEFFERSON COUNTY HWY. DEPT. BARB 79-146-PM June 25, 1979 ALJ - Final 6/79 p619	
	OATVILLE SAND & GRAVEL COMPANY CENT 79-40-M June 19, 1980 ALJ - Final 6/80 p1522	
30 CFR 56.9-88	ALLIED PRODUCTS COMPANY SE 79-46-PM September 4, 1980 ALJ - Review Denied/ Appealed 9/80 p2517*	Operator's removal of roll-over protective structure from front-end loader which is primarily used inside plant area violates 30 CFR 56.9-88 which requires such protective structures on front-end loaders; operator's arguments that equipment was subject to 30 CFR 56.14-13 which requires that front-end loaders be equipped with protective canopies when necessary to protect operator and that no canopy was required because men using loader wore hardhats, is rejected because 30 CFR 56.14-13 does not supersede or negate requirement of 30 CFR 56.9-88.
	HASTIE MINING COMPANY LAKE 79-191-M May 29, 1980 ALJ - Review Denied 5/80 p1163*	Operating front-end loader without roll over protection is serious violation of 30 CFR §56.9-88, and large financial burden on company to abate condition is no defense for company's failure to comply with citation and withdrawal order.
30 CFR 56.11	UNITED CEMENT COMPANY BARB 79-55-PM January 28, 1980 ALJ - Final 1/80 p133*	Operator's failure to install handrails around platform, which was elevated approximately 30 inches above ground, and on steps of a kiln oxygen analyzer station constituted violation of 30 CFR §56.11.
30 CFR 56.11-1	A H SMITH STONE COMPANY VA 80-2-M December 1, 1980 ALJ - Final 12/80 p3486*	Operator fails to comply with 30 CFR 56.11-1, which requires that safe means of access be provided to all working places, when feeder is not equipped with steps or handrails and miners must step up, from insecure footing, distance of two feet in order to leave feeder.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.11-1	ALLIED CHEMICAL CORPORATION WILK 79-109-PM April 24, 1980 ALJ - Final 4/80 p950*	Platform which is used on irregular basis to adjust feeder and is used seasonally for general maintenance does not qualify as "working place" so that accumulation of muck on platform is not violation of 30 CFR 56.11-1, which requires that safe means of access be provided and maintained to all working places.
	AMERICAN SAND & GRAVEL COMPANY BARB 79-209-PM March 31, 1980 ALJ - Final 3/80 p763	
	C & O MATERIALS CORPORATION CENT 79-398-M August 26, 1980 ALJ - Final 8/80 p2339*	Citation for violation of 30 CFR 56.11-1 which requires operator to provide safe means of access to work platforms must be vacated when cited platform is located near shaker screen and conveyor belt which carried material up to screen was equipped with handrails so that employee could safely walk up incline directly to shaker screen and platform.
	CEMENT DIVISION, NATIONAL GYPSUM COMPANY VINC 79-154-PM December 26, 1979 ALJ - Review Granted 12/79 p2115	
	CIANBRO CORPORATION WILK 79-89-PM December 31, 1979 ALJ - Final 12/79 p2207*	Failure to have ladder as constitutes violation of requirement under 30 CFR §56.11-1 that safe means of access be provided to all workplaces because miner might attempt to gain access to walkway without ladder and subject himself to possible injury.
	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.11-1	IDEAL BASIC INDUSTRIES-CEMENT DIVISION SE 79-16-M June 9, 1980 ALJ - Review Granted 6/80 p1352	
	IDEAL CEMENT COMPANY BARB 79-61-PM October 3, 1979 ALJ - Final 10/79 p1506*	Citation for violation of 30 CFR §56.11-1 is vacated since inspector's conclusion that accumulation of clinker dust on kiln roof would cause roof to collapse on walkway was based on conjecture and speculation and not on any engineering tests or advice concerning structural integrity of kiln roof.
	ISLAND COUNTY HIGHWAY DEPARTMENT WEST 79-372-M November 5, 1980 ALJ - Final 11/80 p3227	
	MARSHFIELD SAND & GRAVEL, INC. YORK 79-68-M June 10, 1980 ALJ - Final 6/80 p1391*	Use of front-end loader to lubricate screw conveyor instead of approved bucket truck violates 30 CFR §56.11-1, which requires that safe means of access be provided and maintained to all working places, because use of front-end loader presents hazards not presented by bucket truck, including danger of dropping in event of hose failure.
	THE STANDARD SLAG COMPANY LAKE 79-217-M November 19, 1980 ALJ - Final 11/80 p3312*	Operator does not violate requirement of 30 CFR 56.11-1 that safe means of access be provided and maintained in working places when cited walkway was irregularly used catwalk, not needed as means of access and not used as workplace.
30 CFR 56.11-2	A J GILBERT CONSTRUCTION COMPANY DENV 78-566-PM April 5, 1979 ALJ - Review Denied 4/79 p161	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.11-2	BRUBAKER-MANN, INC. WEST 79-193-M January 29, 1980 ALJ - Final 1/80 p227*	Citation issued for violation of 30 CFR §56.11-2, which requires handrails for elevated walkways, is vacated since operator, who is more familiar than inspector with company's work activities, testified that no workers used walkway.
	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
	LONE STAR INDUSTRIES, INC. VA 79-83-M May 5, 1980 ALJ - Final 5/80 p1050*	Catwalk which is elevated above water at some time and is primarily used as loading dock but also used as passageway for workers qualifies as "elevated walkway" for purposes of 30 CFR 56.11-2 so that operator's failure to provide handrails for full length of catwalk violates regulation.
	MAUMEE HAULERS & EXCAVATORS LAKE 80-192-M December 18, 1980 ALJ - Final 12/80 p3708*	Federal Mine Safety and Health Act does not apply to machine which was out of service and in inoperable condition at time inspector issued citation; therefore citation is vacated.
30 CFR 56.11-6	STANDARD BUILDING MATERIAL COMPANY DENV 79-60-PM June 28, 1979 ALJ - Final 6/79 p702	
30 CFR 56.11-12	AMERICAN SAND & GRAVEL COMPANY BARB 79-209-PM March 31, 1980 ALJ - Final 3/80 p763	
	COLCHESTER STONE COMPANY LAKE 79-259-M March 31, 1980 ALJ - Final Unbound*	Gap of 4 1/2 feet between handrail and walkway that is by area which accumulates dust and rock creates fall hazard and violates requirement of 30 CFR §56.11-12 that openings near travelways be protected by railings.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.11-12	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
	GENERAL MATERIALS, INC. DENV 79-315-PM October 17, 1979 ALJ - Final 12/79 p2150	
30 CFR 56.12	SAN JUAN CEMENT COMPANY, INC. BARB 79-222-PM October 22, 1980 ALJ - Final 9/80 p2602*	Company which operates open pit limestone quarry where it extracts limestone for use in production of cement is subject to standards set forth in Part 56 of Title 30 of Code of Federal Regulations which apply to sand, gravel, and crushed stone operations, because, although company operates open pit quarry, cement production requires crushing of limestone to produce finely ground powder and thus qualifies as "crushed stone operation."
30 CFR 56.12-1	ATLANTIC CEMENT COMPANY, INC. YORK 79-10-M October 10, 1980 ALJ - Final 10/80 p2910*	
30 CFR 56.12-8	ARKANSAS LIME COMPANY CENT 79-213-M September 29, 1980 ALJ - Final 9/80 p2725	
	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
	KARBER GRAVEL COMPANY, INC. LAKE 80-110-M September 12, 1980 ALJ - Final 9/80 p2620	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.12-8	PENNSYLVANIA GLASS SAND CORPORATION BARB 79-108-PM August 29, 1979 ALJ - Final 8/79 p1191*	Electrical wiring for start-stop switches that was permitted by bushings to be stripped back six inches constituted violation of 30 CFR §56.12-8 requirement that insulated wiring passing through metal frames be substantially bushed with insulating bushings. Citation for violation of 30 CFR §56.12-8 requirement that cables enter motor frames through proper fittings is vacated since citation refers to electrical wiring, not cables, and standard does not require that electrical wiring enter motor frames through proper fittings.
	UNION ROCK & MATERIALS CORPORATION DENV 78-579-PM March 5, 1980 ALJ - Review Granted 3/80 p645*	Nonfunctional loose power conductor improperly fitted with strain relief did not violate 30 CFR §56.12-8 requirement that cables enter motors or electrical compartments only through proper fittings because power wires and cables must be energized or subject to being energized before standard applies.
30 CFR 56.12-16	KEYSTONE PORTLAND CEMENT COMPANY PENN 80-25-M November 21, 1980 ALJ - Final 11/80 p3390	
	NORTH AMERICAN SAND & GRAVEL COMPANY LAKE 79-51-M July 31, 1980 ALJ - Final 7/80 p2017*	Operator violates 30 CFR §56.12-16, which requires use of lock-out procedure to insure that miner working on electrical equipment is not injured by inadvertent starting of equipment, where inspector, who was told that fuses were removed from fuse box when equipment was repaired, found fuses in place; additionally, actual removal of fuses is not type of fool-proof system required by standard.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.12-16	WARNER COMPANY PENN 79-161-M April 28, 1980 ALJ - Final 4/80 p972*	Foreman's conduct in attempting to repair equipment while electrical power is on violates 30 CFR 56.12-16 but employer's defense of unforeseeable and unpreventable employee misconduct is barred because foreman's act was not willfully reckless or obviously inexplicable but stemmed only from lack of safety consciousness and Mine Safety and Health Act of 1977 is strict liability statute under which employer is liable without fault for employee's failure to exercise high degree of care imposed by Act.
30 CFR 56.12-20	CAROLINA STALITE COMPANY BARB 79-319-P December 2, 1980 ALJ - Review Granted 12/80 p3508	
30 CFR 56.12-25	McCORMICK SAND CORPORATION LAKE 79-80-RM January 11, 1980 ALJ - Final 1/80 p21*	Operator's failure to have continuous metallic grounding conductor did not violate 30 CFR §56.12-25 because standard requires only a "ground," and does not mandate any particular ground such as "continuous" conductor.
30 CFR 56.12-30	ATLANTIC CEMENT COMPANY, INC. YORK 79-10-M October 10, 1980 ALJ - Final 10/80 p2910*	Citation issued for violation of 30 CFR 56.12-30, because ground wire on temporary wiring for outside lighting was severed and wiring was exposed, is vacated since company electrician established that condition pesented no hazard because building was grounded by its ironwork and ground rods, and cited conduit was connected to building ground.
	JOHN PETERSEN WEST 79-300 November 25, 1980 ALJ - Final 11/80 p3404*	Operator is not required by mandatory safety standard 30 CFR 56.12-30 (correction of dangerous conditions before wiring is energized) to install weatherhead on drive motor; wrapping of wires coming out of motor with friction tape and rubber satisfies requirements of standard.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.12-30	PENNSYLVANIA GLASS SAND CORPORATION BARB 79-108-PM August 29, 1979 ALJ - Final 8/79 p1191*	Separation of junction box from dust collector drive motor constituted a violation of 30 CFR §56.12-30 even though separation resulted from vibration rather than being "torn loose" as characterized in citation.
	UNITED STATES STEEL CORPORATION BARB 79-37 January 9, 1979 ALJ - Final Unbound	
30 CFR 56.12-32	C & O MATERIALS CORPORATION CENT 79-398-M August 26, 1980 ALJ - Final 8/80 p2339*	Operator's failure to provide inspection and cover plates on junction box on motor of roll crusher does not violate 30 CFR 56.12-32 which requires such protection, when evidence establishes that equipment had not been used for some time because of electrical defect and therefore presented no electrical hazard.
	CEMENT DIVISION, NATIONAL GYPSUM COMPANY VINC 79-154-PM December 26, 1979 ALJ - Review Granted 12/79 p2115	
	CENTRAL PRE-MIX CONCRETE COMPANY DENV 79-220-PM September 26, 1979 ALJ - Final 9/79 p1424*	Company violated 30 CFR §56.12-32 where failure to have cover plate on electric motor presented remote possibility that someone working near exposed box would place hand tools in uncovered plate area, thereby breaking insulation on wires or contacting conductors.
	CENTRAL PRE-MIX CONCRETE COMPANY DENV 79-62-PM June 7, 1979 ALJ - Final 6/79 p522*	Fact that independent contractor failed to put cover plate over electric motor of conveyor is no defense to 30 CFR §56.12-32, which requires operator to provide such cover plates.
	OTTAWA SILICA COMPANY WILK 79-69-PM December 28, 1979 ALJ - Review Denied 12/79 p2161	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.12-32	PHOENIX REDI-MIX COMPANY, INC. WEST 79-13-M April 22, 1980 ALJ - Final 4/80 p934*	Absence of cover plates on crusher electric shack and electric switches violates requirement of 30 CFR 56.12-32 that inspection and cover plates on electrical equipment and junction boxes be kept in place at all times except during testing or repairs when evidence shows that repair work being done at time of inspection involved digging trench and did not involve removal of cover plates on electrical equipment.
	UNION ROCK & MATERIALS CORPORATION DENV 78-579-PM March 5, 1980 ALJ - Review Granted 3/80 p645*	Motor junction box cover left off first stage of sand reject conveyor during checking of conveyor system violated 30 CFR §56.12-32 requirement that inspection and cover plates on electrical equipment and junction boxes be kept in place at all times because exception contained in standard refers to testing of electrical connections or to splicing wires rather than to "testing phase" of setting up plant.
30 CFR 56.12-34	B V HEDRICK GRAVEL & SAND COMPANY SE 79-88-M May 29, 1980 ALJ - Final 5/80 p1169*	Unguarded light bulbs which are six feet four inches off floor present possible burn or shock hazard to tall people who might run into them or to people who might carry something on their shoulder and hit light, so that condition constitutes violation of 30 CFR §56.12-34, which provides that lights which by their location present shock or burn hazard shall be guarded.
	CEMENT DIVISION, NATIONAL GYPSUM COMPANY VINC 79-154-PM December 26, 1979 ALJ - Review Granted 12/79 p2115	
	PENNSYLVANIA GLASS SAND CORPORATION BARB 79-108-PM August 29, 1979 ALJ - Final 8/79 p1191*	Citation for violation of 30 CFR §56.12-34 requirement that portable extension lights be guarded is vacated since light bulb in question was located six to ten feet behind workers and did not present shock or burn hazard.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.12-34	UNITED CEMENT COMPANY BARB 79-55-PM January 28, 1980 ALJ - Final 1/80 p133*	Requirement under 30 CFR §56.12-34 that light bulbs be guarded, which is designed to prevent shock hazards, is not violated when evidence does not show that miners in cited area were using metal rods that could have made contact with filament in broken bulbs.
30 CFR 56.12-35	WALKER STONE COMPANY DENV 79-217-PM October 29, 1979 ALJ - Final 10/79 p1713*	Citation for violation of 30 CFR §56.12-35 lacked specificity since inspector's finding that metal enclosures were improperly grounded was based on his reading of Electrical Code, but citation did not cite any particular standard in Code so as to apprise operator of exactly what it was being charged with.
30 CFR 56.12-36	NATIONAL LIME & STONE COMPANY VINC 79-99-PM December 9, 1980 ALJ - Final 12/80 p3572*	Operator violates requirements of 30 CFR 56.12-36 when fuses in electrical circuit box are removed by hand; maintenance of built-in safety features of box does not excuse operator from requirement that fuses shall be removed by equipment and techniques especially designed to prevent electrical shock, since box is not failsafe device and could malfunction.
30 CFR 56.12-37	NATIONAL LIME & STONE COMPANY VINC 79-99-PM December 9, 1980 ALJ - Final 12/80 p3572*	Disconnection and deenergization of electrical circuit box at point where cable enters top of box, where it is connected to first fuse inside box, constitutes deenergization of only portion of circuit. However, lockout of box at main plant power switch is needed to deenergize entire circuit.
30 CFR 56.12-67	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
30 CFR 56.12-68	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.12-68	OTTAWA SILICA COMPANY WILK 79-69-PM December 28, 1979 ALJ - Review Denied 12/79 p2161	
30 CFR 56.12-71	SAN JUAN CEMENT COMPANY, INC. BARB 79-222-PM October 22, 1980 ALJ - Final 9/80 p2602*	High-voltage powerline which is not located at least ten feet above vehicles that drive under line constitutes violation of 30 CFR 56.12-71, and operator is guilty of gross negligence because it was foreseeable that truck driver who was electrocuted might open hatch under powerline while waiting in line to be serviced.
30 CFR 56.14	MARSHFIELD SAND & GRAVEL, INC. YORK 79-68-M June 10, 1980 ALJ - Final 6/80 p1391*	Operator violates 30 CFR §56.14-35 when employee attempts to grease screw conveyor while it is in operation as regulation specifically prohibits lubrication of machinery while it is in motion.
30 CFR 56.14-1	AMERICAN SAND & GRAVEL COMPANY BARB 79-209-PM March 31, 1980 ALJ - Final 3/80 p763	
	APPLEGATE AGGREGATES WEST 79-150 August 27, 1980 ALJ - Final 8/80 p2403*	Provisions of 30 CFR 56.14-1 require guarding of exposed moving machine parts which may be contacted by persons and cause injuries, and citation issued for violation of standard must be vacated when cited unguarded vibrator is in position such that worker would be no closer than two to three feet from pinch points, guardrail prevents ready access to vibrator, and equipment is shut down when maintenance is performed.
	ARIZONA CRUSHING COMPANY WEST 79-195-M December 24, 1980 ALJ - Final 12/80 p3736	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.14-1	CALICO ROCK MILLING, INC. DENV 79-219-PM October 17, 1979 ALJ - Final 10/79 p1621	
	CAPITOL AGGREGATES, INC. DENV 79-163-PM April 14, 1980 ALJ - Review Granted 4/80 p869	
	CAROLINA STALITE COMPANY BARB 79-319-P December 2, 1980 ALJ - Review Granted 12/80 p3508	
	CENTRAL PRE-MIX CONCRETE COMPANY DENV 79-220-PM September 26, 1979 ALJ - Final 9/79 p1424*	Presence of unguarded tail pulleys, although located in isolated areas where employees would not normally travel, violated 30 CFR §56.14-1 since they were adjacent to walkway where miners passed while performing maintenance and cleanup work on belts and pulleys. Guard on V-belt drive which did not extend low enough to protect workers from pinch point was inadequate and constituted violation of 30 CFR §56.14-1 because there was a possibility, however remote, that worker walking along adjacent walkway could become entangled in exposed pulley.
	DAN NEVILLE CENT 80-180-M December 11, 1980 ALJ - Final 12/80 p3586*	Snow fence approximately three and one-half to four feet high is not adequate guard for drive unit of crusher approximately five feet high since equipment could be contacted by and cause injury to people.
	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.14-1	GENERAL MATERIALS, INC. DENV 79-315-PM October 17, 1979 ALJ - Final 12/79 p2150	
	GROVE CRUSHING COMPANY WEST 79-319-M December 9, 1980 ALJ - Final 12/80 p3567	
	IDEAL BASIC INDUSTRIES-CEMENT DIVISION SE 79-16-M June 9, 1980 ALJ - Review Granted 6/80 p1352	
	IDEAL CEMENT COMPANY BARB 79-61-PM October 3, 1979 ALJ - Final 10/79 p1506*	Failure to install guard on bend pulley pinch point violates 30 CFR §56.14-1, even though bend pulley is not specifically mentioned in standard, since standard refers to similar exposed moving machine parts which would include bend pulleys. Exposed pulley pinch point that was located above level of adjacent walkway which itself was within four or five inches of conveyor belt constituted violation of 30 CFR §56.14-1, since miner could be caught in pinch point if he tripped or fell while walking along walkway.
	JOHN PETERSEN WEST 79-300 November 25, 1980 ALJ - Final 11/80 p3404*	Operator violates requirement of 30 CFR 56.14-1 that guards be provided around exposed moving machine parts which are likely to cause injury, where guard is not provided around tail pulley of return conveyor to shaker screen and pathway existing along equipment indicates there is likelihood that one could become entangled in machine.
	KINCHELOE & SONS, INC. WEST 79-377-M June 24, 1980 ALJ - Final 6/80 p1570*	Operating unguarded self-cleaning tail pulleys which are located under cone conveyor and bunker conveyor and are 12 to 14 inches above ground does not violate 30 CFR §56.14-1, because regulation requires guarding of exposed moving machine parts only where there is danger of bodily contact.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.14-1	LONE STAR INDUSTRIES, INC. VINC 79-21-PM July 3, 1979 ALJ - Final 7/79 p809*	Operator cannot be held accountable to nebulous MSHA memo interpreting 30 CFR §56.14-1 that is not communicated to operator; operator's compliance responsibility is limited to language of 30 CFR §56.14-1. Inspector's erroneous determination that guard on pinch points was adequate relieves operator of compliance with different interpretation of 30 CFR §56.14-1 when inspector abates citation and operator relies on inspector's judgement.
	MASSEY SAND & ROCK COMPANY DENV 78-575-PM June 18, 1979 ALJ - Review Denied 6/79 p545*	Citations for violations of 30 CFR §56.14-1 are vacated since there is no evidence that pinch points beneath skirt boards of conveyors were readily accessible to someone walking or working so as to require guards to prevent injury.
	MISSOURI GRAVEL COMPANY LAKE 80-83-M July 8, 1980 ALJ - Review Granted 7/80 p1792	
	NEW YORK STATE DEPARTMENT OF YORK 79-21-M July 3, 1980 ALJ - Final 7/80 p1749*	Operator violates 30 CFR §56.14-1, which requires guarding of exposed moving machine parts which may cause physical injury if contacted, when there are exposed idler rollers on conveyor belt which left exposed pinch point which could result in physical injury.
	NORTH AMERICAN SAND & GRAVEL COMPANY LAKE 79-51-M July 31, 1980 ALJ - Final 7/80 p2017*	Citation for violation of 30 CFR §56.14-1 which requires guarding of exposed moving machine parts must be vacated when evidence established that cited chain and drive pulley which had exposed pinch points were both located out of workers' reach.
	NORTHERN AGGREGATES, INC. WILK 79-144-PM May 7, 1980 ALJ - Final 5/80 p1065	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.14-1	SCHNEIDERS READY MIX, INC. WEST 79-69-M May 13, 1980 ALJ - Final 5/80 p1092*	Operator's failure to provide guards on conveyor belt unit which has wide enough clearance to allow individual to walk around it consitutes violation of 30 CFR §56.14-1 which requires that exposed moving parts which may be contacted by persons, and which may cause injury to persons, be guarded.
	STANDARD BUILDING MATERIAL COMPANY DENV 79-60-PM June 28, 1979 ALJ - Final 6/79 p702	
	THE STANDARD SLAG COMPANY LAKE 79-217-M November 19, 1980 ALJ - Final 11/80 p3312*	Operator did not violate mandatory safety requirement of 30 CFR 56.14-1 that exposed moving machine parts be guarded, because "testing" exception allows machinery to be unguarded during initial setup.
	TOWN OF CANANDAIGUA YORK 80-37-M August 7, 1980 ALJ - Final 8/80 p2154*	Operator violates 30 CFR 56.14-1, which requires guarding of exposed moving machine parts that may be contacted by persons, when sprockets on crushers are unguarded and chain running over sprockets created pinch points in which employee could get arm caught and suffer sever injuries.
	WELLS-LAMSON QUARRY COMPANY, INC. WILK 79-33-PM August 10, 1979 ALJ - Final 8/79 p1034	
30 CFR 56.14-6	CALICO ROCK MILLING, INC. DENV 79-219-PM October 17, 1979 ALJ - Final 10/79 p1621	
	CAROLINA STALITE COMPANY BARB 79-319-P December 2, 1980 ALJ - Review Granted 12/80 p3508	

Section of Act/Reg	Case Identification	Summary
30 CFR 56.14-6	EXCEL MINERAL COMPANY WEST 79-173-M December 5, 1979 ALJ - Final 12/79 p2001	
	IDEAL CEMENT COMPANY BARB 79-61-PM October 3, 1979 ALJ - Final 10/79 p1506*	Fact that inspector does not specifically recall whether coal elevator was moving when unguarded chain drive was observed does not vitiate citation for violation of 30 CFR §56.14-6 since inspector observed coal around elevator buckets and kiln was burning and operating.
	SUPERIOR SAND & GRAVEL, INC. VINC 79-107-PM December 20, 1979 ALJ - Final 12/79 p2105*	Citation charging violation of requirement under 30 CFR §56.14-6 that machine guards be securely in place is vacated since, although screen guarding driver coupling was not bolted to floor, it was almost impossible that screen, weighing 30 pounds, could be moved so that worker could fall into coupling. Sand and gravel mine operator is enjoined from excluding federal mine inspector, who it alleges has no experience in sand and gravel mines, from inspecting its operation because inspector is "authorized" by Secretary to inspect mine and exclusion of inspectors would unduly interfere with enforcement of Act.
	UNION ROCK & MATERIALS CORPORATION DENV 78-579-PM March 5, 1980 ALJ - Review Granted 3/80 p645*	Guard left off V-belt drive of sand reject conveyor during test to assure smooth running of complete conveyor belt system violated 30 CFR §56.14-6 requirement that guards be in place during operation of machinery because "testing machinery" exception of standard refers to curing of mechanical malfunction rather than "testing phase" of setting up plant.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.14-13	ALLIED PRODUCTS COMPANY SE 79-46-PM September 4, 1980 ALJ - Review Denied/ Appealed 9/80 p2517*	Operator's removal of roll-over protective structure from front-end loader which is primarily used inside plant area violates 30 CFR 56.9-88 which requires such protective structures on front-end loaders; operator's arguments that equipment was subject to 30 CFR 56.14-13 which requires that front-end loaders be equipped with protective canopies when necessary to protect operator and that no canopy was required because men using loader wore hardhats, is rejected because 30 CFR 56.14-13 does not supersede or negate requirement of 30 CFR 56.9-88.
30 CFR 56.14-29	J P BURROUGHS & SON, INC. LAKE 80-173-M November 13, 1980 ALJ - Final 11/80 p3266*	
	MARTIN MARIETTA AGGREGATES CENTRAL CENT 79-90-M August 7, 1980 ALJ - Final 8/80 p2163*	Operator's maintenance facility, which is used for purpose of maintaining mining equipment, falls within definition of "coal or other mine" as term is defined by Federal Mine Safety and Health Act of 1977, and is covered by Act, even though maintenace facility is not located at actual mining site because facility is structure directly related to and used in mining operation. Operator violates 30 CFR 56.14-29 when mechanic is found working on front-end loader with power on and with safety bars unattached because regulation requires that repairs shall not be performed on machinery until power is off and machinery is blocked against motion.
30 CFR 56.15-4	C & O MATERIALS CORPORATION CENT 79-398-M August 26, 1980 ALJ - Final 8/80 p2339*	Operator violates provisions of 30 CFR 56.15-4 when safety glasses are not worn by employees who are using sledge hammers to break oversized rocks in primary feeder, even though operator provided glasses to employees, because glasses issued afford no protection unless they are worn.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.15-4	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
30 CFR 56.15-5	BRUBAKER-MANN, INC. WEST 79-193-M January 29, 1980 ALJ - Final 1/80 p227*	Citation issued for violation of 30 CFR §56.15-5, which requires that safety belts be worn by miners when in danger of falling, is vacated since company showed that crusher operator could not fall through opening in grizzlies.
	EL PASO ROCK QUARRIES, INC. DENV 79-139-PM December 14, 1979 ALJ - Review Granted 12/79 p2046	
	GENERAL PORTLAND, INC. DENV 79-277-PM September 26, 1980 ALJ - Final 9/80 p2688*	Provisions of 30 CFR 56.15-5 require that employees wear safey belts and lines where there is danger of falling, and operator violates standard when employee is found standing on flange of elevator shaft 125 feet above ground without protection of safety belt or line and there were no handrails to prevent his falling.
30 CFR 56.15-7	GENERAL PORTLAND, INC. DENV 79-277-PM September 26, 1980 ALJ - Final 9/80 p2688*	Operator violates 30 CFR 56.15-7 which requires that miners wear goggles when welding, cutting, or working with molten metal when miner is found wearing only safety glasses while using torch to install metal steps, because safety glasses lack side shields and permit sparks to enter and cause injury to eye while goggles cover entire eye and provide superior protection.
30 CFR 56.16-5	ACME CONCRETE COMPANY WEST 79-214-M February 22, 1980 ALJ - Final 2/80 p515*	Responsibility of securing gas cylinders rests on operator under 30 CFR §56.16-5 and fact that independent vendor failed to secure cylinders on delivery is no defense to operator's alleged violation of standard.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.16-5	IDEAL BASIC INDUSTRIES-CEMENT DIVISION SE 79-16-M June 9, 1980 ALJ - Review Granted 6/80 p1352	
	STANDARD BUILDING MATERIAL COMPANY DENV 79-60-PM June 28, 1979 ALJ - Final 6/79 p702	
30 CFR 56.16-9	PENNSYLVANIA GLASS SAND CORPORATION BARB 79-108-PM August 29, 1979 ALJ - Final 8/79 p1191*	General requirement in 30 CFR §56.16-9 that men stay clear of suspended loads applies to men working under any loads, whether it be "materials," as that term is commonly understood, or motors or other equipment. Citation for violation of 30 CFR §56.16-9 requirement that men stay clear of suspended loads because there were no tracks and rolling dollies to change scrubber liners lacks particularity, since standard does not mention tracks and rolling dollies and condition described in citation does not state that miners had in fact worked under suspended loads.
30 CFR 56.17-1	BETHLEHEM MINES CORPORATION PENN 80-105-M August 27, 1980 ALJ - Final 8/80 p2367	
	CAPITOL AGGREGATES, INC. DENV 79-163-PM April 14, 1980 ALJ - Review Granted 4/80 p869	
	J P BURROUGHS & SON, INC. LAKE 80-173-M November 13, 1980 ALJ - Final 11/80 p3266*	Operator violates 30 CFR 56.17-1 for not providing sufficient light to work safely when there existed only one or two light bulbs in crushed stone feed tunnel; inspector's opinion that illumination is insufficient is all that is required to establish violation and measuring devices or scientific testing are not required.

Section of Act/Reg	Case Identification	Summary
30 CFR 56.17-1	UNION ROCK & MATERIALS CORPORATION WEST 79-93-M November 14, 1980 ALJ - Final 11/80 p3289	
30 CFR 56.18-10	NEW YORK STATE DEPARTMENT OF YORK 79-21-M July 3, 1980 ALJ - Final 7/80 p1749*	Citation for violation of 30 CFR §56.18-10 which requires that first aid training be made available to all interested employees must be vacated when evidence establishes only that none of employees at time of inspection had current first aid card, and there is no evidence concerning availability of first aid training to other employees.
30 CFR 56.20-3	IDEAL CEMENT COMPANY BARB 79-61-PM October 3, 1979 ALJ - Final 10/79 p1506*	Fact that accumulation of coal and clinker dust in walkway was caused by sudden interruption and blockage of the conveyor system that occurs during production cycle is no defense to charge of violation of requirement under 30 CFR §56.20-3 that workplaces be kept clean and orderly.
	UNITED CEMENT COMPANY BARB 79-55-PM January 28, 1980 ALJ - Final 1/80 p133*	Loose paper, wire conduit, empty wire reel, and gallon glass jug on floor and walkway of electrical control room, which was used as work room and lunch room, constituted violation of 30 CFR §56.20-3
30 CFR 56.20-11	SAN JUAN CEMENT COMPANY, INC. BARB 79-222-PM October 22, 1980 ALJ - Final 9/80 p2602*	Operator violates 30 CFR 56.20-11 when it fails to post warning signs or barricades in area where high-voltage powerlines cross main road and safety hazard is not apparent to individuals using road; finding of gross negligence is justified when operator fails to post signs or barricades after electrocution occurred in area because it was foreseeable that another electrocution could occur.
30 CFR 57.2	MAGMA COPPER COMPANY DENV 78-574-PM July 3, 1979 ALJ - Review Dismissed 7/79 p837*	Raised platform on head frame above mine shaft is not "travelway" within definition at 30 CFR §57.2 requiring guarding of openings near travelways is not applicable to such platform.

Section of Act/Reg	Case Identification	Summary
30 CFR 57.2	ORACLE RIDGE MINING PARTNERS WEST 79-248-M December 8, 1979 ALJ - Review Granted 12/79 p2015	
30 CFR 57.2-8	HOMESTAKE MINING COMPANY DENV 79-155-PM February 20, 1980 ALJ - Final 2/80 p493*	Operator's failure to label three principal power switches at borehole machine to show what units they controlled violated 30 CFR §57.2-8 because existence of three boxes without markings could confuse someone during emergency as to right switch to borehole machine.
30 CFR 57.3-2	CYPRUS INDUSTRIAL MINERALS COMPANY DENV 78-558-M August 3, 1978 ALJ - Review Granted in Part 12/79 p2069	
30 CFR 57.3-5	CLIMAX MOLYBDENUM COMPANY DENV 79-21-M October 9, 1980 ALJ - Final 10/80 p2873	
	CLIMAX MOLYBDENUM COMPANY WEST 79-21-M October 9, 1980 ALJ - Final 10/80 p2873*	Presence of loose rock and unconsolidated materials on 80-foot highwall bank over work site constitutes unsafe ground condition within meaning of 30 CFR 57.3-5, and failure of operator to insure that area was scaled in its entirety constitutes violation of standard.
30 CFR 57.3-20	HOMESTAKE MINING COMPANY CENT 80-92-M December 16, 1980 ALJ - Final 12/80 p3630*	Citation for violation of 30 CFR 57.3-20 (ground support shall be used when needed) is vacated when no mining had been done in area for 15 years, deteriorated timbers were replaced, timbers and rock bolts were installed, shot crete was used, cited split post and loose timber were "ties," cited protruding rock had adequate support, and cited cracks in roof were not fresh but of long duration.

Section of Act/Reg	Case Identification	Summary
30 CFR 57.3-20	KERR-McGEE NUCLEAR CORPORATION DENV 79-201-P December 5, 1979 ALJ - Review Granted 12/79 p1995*	Secretary of Labor's contention that company violated 30 CFR §57.3-20 by failing to use timbering for ground support is rejected since standard only requires that method of support be consistent with nature of ground and gives company almost complete discretion on which type of ground support to use.
	ST. JOE ZINC COMPANY WILK 79-41-PM October 26, 1979 ALJ - Final 10/79 p1699	
30 CFR 57.3-22	ASARCO, INC. DENV 79-473-PM April 15, 1980 ALJ - Final 4/80 p920*	There is no violation of 30 CFR 57.3-22 which requires that loose ground be taken down or be adequately supported before any work is done if miners have not yet reached that portion of mining cycle which requires them to support area and thus are not exposed to loose and unconsolidated ground.
	CLIMAX MOLYBDENUM COMPANY DENV 79-393-PM October 29, 1980 ALJ - Final 10/80 p3158*	Routine operation of daily scaling down of travelway by either safety miner or specifically assigned two-man crew is in compliance with safety standard 30 CFR 57.3-22 which requires that ground conditions along travelways be examined periodically and scaled or supported as necessary.
	DAY MINES, INC. DENV 79-424-PM July 2, 1980 ALJ - Final 7/80 p1720*	Loose roof in area which is used for switching cars and storing equipment violates 30 CFR §57.3-22, which requires that all working places and travelways be periodically inspected for loose roof and scaled as necessary, because miners are required to make frequent trips into area.
	ENERGY FUELS NUCLEAR, INC. DENV 78-434-M December 4, 1978 ALJ - Final Unbound*	

Section of Act/Reg	Case Identification	Summary
30 CFR 57.3-22	HOMESTAKE MINING COMPANY CENT 79-27-M August 20, 1980 ALJ - Review Granted 8/80 p2295	
	RIO ALGOM CORPORATION DENV 79-347 January 29, 1980 ALJ - Final 4/80 p784*	Imminent danger existed where broken timber caps and stripped plates on split bolts, which were caused by excessive weight on timbers, indicating recurring ground movement, two unintended roof falls had occurred, miners regularly worked in area, and there was only one exit from mine.
	ST. JOE ZINC COMPANY WILK 79-41-PM October 26, 1979 ALJ - Final 10/79 p1699	
	SUNSHINE MINING COMPANY DENV 78-568-PM(A) March 27, 1979 ALJ - Review Denied 3/79 p169	
	SUNSHINE MINING COMPANY DENV 78-569-PM(A) March 27, 1979 ALJ - Review Denied 3/79 p167	
30 CFR 57.4-2	MAGMA COPPER COMPANY DENV 78-574-PM July 3, 1979 ALJ - Review Dismissed 7/79 p837*	Secretary's failure to determine by testing, flash point of allegedly combustible liquid, requires vacation of citation for violation of 30 CFR §57.4-2 for failure to post sign warning against smoking or open flame.
30 CFR 57.4-29	F M C CORPORATION WEST 79-419-RM January 29, 1980 ALJ - Final 1/80 p225	
30 CFR 57.5-5	CLIMAX MOLYBDENUM COMPANY DENV 79-102-M August 14, 1979 ALJ - Review Granted 8/79 p1044	

Section of Act/Reg	Case Identification	Summary
30 CFR 57.5-5		Operator's request for declaratory order interpreting dust standard, 30 CFR 57.5-5, because operator alleged that Secretary contemplated future enforcement based on Secretary's alleged erroneous interpretation, is denied because operator is not in position of party which must act at its peril if declatory relief is denied.
30 CFR 57.5-50 (b)	DAY MINES, INC. DENV 79-330-PM November 15, 1979 ALJ - Final 11/79 p1869	
30 CFR 57.6-1	DAY MINES, INC. DENV 79-424-PM July 2, 1980 ALJ - Final 7/80 p1720*	Citation for violation of 30 CFR §57.6-1, which requires detonators to be stored in magazines, must be vacated where inspector claimed that two miners, who were blasting face, left box of detonators in roadway until preparation of blasting holes had been completed, because evidence established that detonators were left lying next to rib, not in roadway, and that procedure used by blasters was reasonable.
	JAQUAYS MINING CORPORATION WEST 79-233-M December 16, 1980 ALJ - Final 12/80 p3605	
30 CFR 57.6-20	ORACLE RIDGE MINING PARTNERS WEST 79-248-M June 6, 1980 RC 6/80 p1192*	Standard, 30 CFR 57.6-20, which requires that magazines be "constructed substantially of noncombustible material or covered with fire resistant material," was erroneously construed by judge as imposing density requirement since standard was intended only to minimize risk of fire and does not relate to density of construction.
30 CFR 57.6-20 (c)	ORACLE RIDGE MINING PARTNERS WEST 79-248-M December 8, 1979 ALJ - Review Granted 12/79 p2015	

Section of Act/Reg	Case Identification	Summary
30 CFR 57.6-20 (c)		Standard, 30 CFR 57.6-20, which requires that magazines be "constructed substantially of noncombustible material or covered with fire resistant material," was erroneously construed by judge as imposing density requirement since standard was intended only to minimize risk of fire and does not relate to density of construction.
30 CFR 57.6-92	OZARK MAHONING COMPANY VINC 79-138-PM November 29, 1979 ALJ - Review Denied 11/79 p1922*	Operator violated 30 CFR §57.6-92, which requires that damaged or deteriorated explosives be destroyed in safe manner, since sticks of explosive were becoming "very mushy" and beads of oil had formed on outer surfaces.
30 CFR 57.6-103	HOMESTAKE MINING COMPANY CENT 79-27-M August 20, 1980 ALJ - Review Granted 8/80 p2295	
30 CFR 57.6-177	DAY MINES, INC. DENV 79-424-PM July 2, 1980 ALJ - Final 7/80 p1720*	Operator violates 30 CFR §57.6-177, pertaining to misfire disposal procedures, when blasting agent and blasting wires are left in fired hole, as presence of these materials indicates that all of explosive did not detonate which constitutes a misfire.
	MULZER CRUSHED STONE COMPANY LAKE 80-57-M September 3, 1980 ALJ - Review Granted 9/80 p2497	
30 CFR 57.9-2	FMC CORPORATION WEST 79-168-M June 3, 1980 ALJ - Final 6/80 p1315*	Dismissal of citation for violation of 30 CFR §57.9-2, which requires that equipment defects affecting safety be corrected before equipment is used, is justified when evidence established that defective equipment was not used after inspection, but was sold.
	ST. JOE ZINC COMPANY WILK 79-41-PM October 26, 1979 ALJ - Final 10/79 p1699	

Section of Act/Reg	Case Identification	Summary
30 CFR 57.9-7	RIVERSIDE CEMENT COMPANY WEST 79-97-M April 15, 1980 ALJ / Final 4/80 p895*	Operator violated requirements of 30 CFR §57.9-7 by operating unguarded conveyors with walkways which were not equipped with emergency stop devices or cords along their full length. MSHA's failure to provide written requirements regarding regulation will result in only nominal penalties being assessed for violation of 30 CFR §57.9-7 which requires that unguarded conveyors be equipped with emergency stop devices along their full length, even though violation could result in injury.
30 CFR 57.9-22	TEXAS ARCHITECTURAL AGGREGATES, INC. CENT 79-16-M October 28, 1980 ALJ - Final 10/80 p3124	
30 CFR 57.9-32	FMC CORPORATION WEST 79-167-M May 14, 1980 ALJ - Final 5/80 p1098*	Roof bolter parked with boom elevated does not violate 30 CFR §57.9-32 which provides: "Dippers, buckets, scraper blades, and similar movable parts shall be secured or lowered to the ground when not in use" as regulation applies only to equipment used to move earth, and roof bolter's function is to drill holes and set roof bolts.
30 CFR 57.9-37	FMC CORPORATION WEST 79-168-M June 3, 1980 ALJ - Final 6/80 p1315*	Operator violates 30 CFR §57.9-37 when service truck is left resting on steep grade, unattended, without brakes being set, because regulation requires that mobile equipment which is used for loading and hauling not be left unattended unless brakes are set, and evidence establishes that truck is used for hauling.
30 CFR 57.9-54	CLIMAX MOLYBDENUM COMPANY DENV 79-396-PM February 11, 1980 ALJ - Final 2/80 p360*	Dumping sites not equipped with berms or dumper blocks violate requirement of 30 CFR §75.9-54 that berms, etc., be used at "dumping locations" even though operator is not actually engaged in dumping when cited if operator uses berms, etc., when dumping is in progress.

Section of Act/Reg	Case Identification	Summary
30 CFR 57.9-60	TEXAS ARCHITECTURAL AGGREGATES, INC. CENT 79-16-M October 28, 1980 ALJ - Final 10/80 p3124	
30 CFR 57.9-71	OZARK MAHONING COMPANY VINC 79-138-PM November 29, 1979 ALJ - Review Denied 11/79 p1922*	Operator violated 30 CFR §57.9-71, which requires that traffic rules be posted, since traffic rules including speed, signals and warning signs were not standardized and posted at mine and operator had not posted traffic sign at point where vehicles exited mine property onto country road.
30 CFR 57.11-1	HOMESTAKE MINING COMPANY DENV 79-155-PM February 20, 1980 ALJ - Final 2/80 p493*	Requirement of 30 CFR §57.11-1 that safe means of access be provided to all working places applies to stairway that leads to tail pulley of feeder belt and is used by supervisors, cleanup men, and crusher mechanics when they grease tail pulley. Requirement of 30 CFR §57.11-1 that safe means of access be provided to all working places applies to travelway to area in which regular maintenance is performed and applies regardless of whether work is actually being performed when citation is issued.
	TEXAS ARCHITECTURAL AGGREGATES, INC. CENT 79-16-M October 28, 1980 ALJ - Final 10/80 p3124	
30 CFR 57.11-2	CLIMAX MOLYBDENUM COMPANY WEST 79-192-M July 25, 1980 ALJ - Final 7/80 p1884*	Impossibility of compliance with safety regulation is affirmative defense to cited violation, so that citation for violation of 30 CFR §57.11-2, for failing to provide handrails on elevated walkway which is used to rotate pipe, must be vacated when evidence established that workers must remove handrails in order to move pipe, and workers were given alternate protection by tying off when using walkway.

Section of Act/Reg	Case Identification	Summary
30 CFR 57-11.2		Citation issued for operator's failure to provide handrails along top of flat roof shed must be vacated because 30 CFR §57.11-2 applies only to crossovers, elevated walkways, elevated ramps, and stairways, and top of shed is not covered by descriptions in standard.
30 CFR 57.11-5 (a)	OZARK MAHONING COMPANY VINC 79-138-PM November 29, 1979 ALJ - Review Denied 11/79 p1922*	Operator violated 30 CFR §57.11-51(a), which requires that safe escape routes be maintained, since loose rock had accumulated on runge of escape ladder so as to make a safe handhold or foothold difficult to obtain and accumulations of rock on landings presented slipping or tripping hazard.
30 CFR 57.11-12	HOMESTAKE MINING COMPANY CENT 79-27-M August 20, 1980 ALJ - Review Granted 8/80 p2295	
	HOMESTAKE MINING COMPANY DENV 79-155-PM February 20, 1980 ALJ - Final 2/80 p493*	Operator's failure to guard openings above manway and ore bin did not violate requirement of 30 CFR §57.11-12 that openings near travelways be protected by railings, since manway, which was stopped at top by ongoing construction of chimney and removal of ladder section and was closed at bottom by danger sign, was not travelway within meaning of standard.
	MAGMA COPPER COMPANY DENV 78-574-PM July 3, 1979 ALJ - Review Dismissed 7/79 p837*	Raised platform on head frame above mine shaft is not "travelway" within definition at 30 CFR §57.2 requiring guarding of openings near travelways is not applicable to such platform.

Section of Act/Reg	Case Identification	Summary
30 CFR 57.11-52 (a)	ENERGY FUELS NUCLEAR, INC. DENV 78-434-M December 4, 1978 ALJ - Final Unbound*	Violation of 30 CFR 57.11-52(a) is established where refuge chamber consists of wood materials not made fire-resistant and only method of rendering wood fire-resistant is to apply fire-retardant paint, gunite, or other similar material; alternatives such as wetness of wood chamber bulkhead and wood inside chamber or remote possibilities of fire are not suitable substitute.
30 CFR 57.11-58	ENERGY FUELS NUCLEAR, INC. DENV 78-434-M December 4, 1978 ALJ - Final Unbound*	Personal logs of persons underground maintained by operator's resident geologist and mine foreman and personal wallet containing positive means of identification carried by each person underground do not constitute accurate check-in and check-out system required by 30 CFR 57.11-58.
30 CFR 57.12	CLIMAX MOLYBDENUM COMPANY DENV 78-581-M December 28, 1979 ALJ - Final 12/79 p2180*	Provisions of National Electrical Code which address grounding of electrical system have not been incorporated into standards codified under 30 CFR §57.12 and are not specifically applicable to underground metal and nonmetal mines.
	CLIMAX MOLYBDENUM COMPANY DENV 79-196-M October 17, 1980 ALJ - Final 10/80 p2978*	Standard at 30 CFR 57.12, requiring cables entering electrical compartment to enter only through proper fittings, is violated when Chase Nipple does not permit cable to be maintained in "locked-in" or rigid position and does not provide adequate protection to prevent cable or cable conductors from being pulled out of box and disconnected.
30 CFR 57.12-10	CLIMAX MOLYBDENUM COMPANY DENV 78-553-M December 18, 1980 ALJ - Review Granted 12/80 p3681	

Section of Act/Reg	Case Identification	Summary
30 CFR 57.12-13	CLIMAX MOLYBDENUM COMPANY DENV 79-196-M October 17, 1980 ALJ - Final 10/80 p2978*	Failure to install outer jacket on cable splice renders splice inadequate in violation of 30 CFR 57.12-13, because cable in that condition is not mechanically as strong as original cable with outer jacket intact. Citation for violation of 30 CFR 57.12-13, issued because of alleged inadequate splice on power supply cable to welder, is vacated where evidence is limited to inspector's visual observation that taped splice was torn, coupled with use of Tic Tracer device.
30 CFR 57.12-16	CLIMAX MOLYBDENUM COMPANY DENV 79-196-M October 17, 1980 ALJ - Final 10/80 p2978*	Fact that several steps were required to activate flow of current to motor legs is no defense to citation for failure to lock our main switchbox, as required by 30 CFR 57.12-16, while mechanical work was being performed.
30 CFR 57.12-23	CLIMAX MOLYBDENUM COMPANY WEST 79-303-M July 25, 1980 ALJ - Final 7/80 p1918*	Citations for violations of 30 CFR §57.12-23, which requires guarding of electrical connections which cannot be insulated, must be vacated when evidence establishes that cited, uninsulated bus bars were located more than eight feet above floor and National Electrical Code which is applicable to operator's mine provides that bus bars are protected by location if eight feet above floor.
30 CFR 57.12-25	TEXAS ARCHITECTURAL AGGREGATES, INC. CENT 79-16-M October 28, 1980 ALJ - Final 10/80 p3124	

Section of Act/Reg	Case Identification	Summary
30 CFR 57.12-30	CLIMAX MOLYBDENUM COMPANY DENV 79-196-M October 17, 1980 ALJ - Final 10/80 p2978	
	CLIMAX MOLYBDENUM COMPANY WEST 79-303-M July 25, 1980 ALJ - Final 7/80 p1918*	Citation for violation of 30 CFR §57.12-30, which requires that potentially dangerous condition be corrected before equipment is energized, must be vacated when issued for motor which lacked junction box with bushing, where evidence established that motor was designed without junction box and that there was no shock hazard or dangerous condition.
	SUNSHINE MINING COMPANY DENV 79-99-PM October 3, 1979 ALJ - Final 10/79 p1535*	Loose materials and ground water falling around electrical components of switch rack, creating hazard of shortage and fire, constitute violation of 30 CFR §57.12-30, even though dangerous condition did not predate energizing of equipment wires.
30 CFR 57.12-32	MAGMA COPPER COMPANY DENV 79-320-PM August 9, 1979 ALJ - Final 8/79 p1015	
	MAGMA COPPER COMPANY DENV 79-433-PM September 14, 1979 ALJ - Review Denied - Appealed Not Printed*	Where cover plates were not present on brake release switches for over a month, fact that brake release switches were located in hoist pit inaccessible from surface does not affect finding of violation of 30 CFR §57.12-32.
30 CFR 57.12-82	CLIMAX MOLYBDENUM COMPANY DENV 78-553-M December 18, 1980 ALJ - Review Granted 12/80 p3681	
	HOMESTAKE MINING COMPANY CENT 79-27-M August 20, 1980 ALJ - Review Granted 8/80 p2295	

Section of Act/Reg	Case Identification	Summary
30 CFR 57.12-82	OZARK MAHONING COMPANY VINC 79-138-PM November 29, 1979 ALJ - Review Denied 11/79 p1922*	Operator violated 30 CFR §57.12-82, which requires that power lines be well separated or insulated from waterline, since power cable crossed over and made contact with aluminum water pipe and any physical damage done to insulation of power cable could have caused energization of waterline. Operator violated 30 CFR §57.12-82, which requires that power lines be well separated or insulated from waterlines, since energized powerline had been suspended from aluminum air and waterlines with uninsulated tie wire.
30 CFR 57.14-1	DRAVO LIME COMPANY IBMA 77-M-1 October 28, 1977 ALJ - Final 3/80 p771	
	FMC CORPORATION WEST 79-168-M June 3, 1980 ALJ - Final 6/80 p1315*	Return idler rollers, which provide support system for conveyor belt, are considered "exposed moving machine parts," so that operator violates 30 CFR §57.14-1, which requires guarding of exposed moving machine parts, when idler rollers are unguarded and there is danger of injury to persons who would come into contact with exposed parts. Operator violates 30 CFR §57.14-1, which requires guarding of exposed moving machine parts, when unguarded takeup pulley has pinch point and is located near handrails of work platform, because, in normal course of work duties on platform, employee may come into contact with moving parts and may be injured.
	JAQUAYS MINING CORPORATION WEST 80-1-M December 16, 1980 ALJ - Final 12/80 p3625	

Section of Act/Reg	Case Identification	Summary
30 CFR 57.14-1	MAGMA COPPER COMPANY DENV 79-320-PM August 9, 1979 ALJ - Final 8/79 p1015	
	MAGMA COPPER COMPANY DENV 79-433-PM September 14, 1979 ALJ - Review Denied - Appealed Not Printed*	Evidence established a violation of 30 CFR §57.14-1 where exposed drive shaft and coupling presented danger of contact by persons and subsequent injury.
	RALPH FOSTER & SONS WEST 79-397-M November 20, 1980 ALJ - Review Granted 11/80 p3386	
	RIVERSIDE CEMENT COMPANY WEST 79-94-M December 18, 1979 ALJ - Final 12/79 p2057*	Citation for violations of 30 CFR §57.14-1 is vacated because Secretary of Labor finds that unguarded rollers along conveyor belt constitute hazardous condition only when skirt boards are located along belt and mandatory standard cannot be administered on that basis.
30 CFR 57.15-4	RALPH FOSTER & SONS WEST 79-397-M November 20, 1980 ALJ - Review Granted 11/80 p3386	
	ST. JOE ZINC COMPANY WILK 79-41-PM October 26, 1979 ALJ - Final 10/79 p1699	
30 CFR 57.15-5	KERR-McGEE CORPORATION CENT 79-156-M October 30, 1980 ALJ - Review Granted 10/80 p3190	

Section of Act/Reg	Case Identification	Summary
30 CFR 57.15-5	ST. CLAIR LIME COMPANY DENV 79-530-PM June 23, 1980 ALJ - Final 6/80 p1555*	Allowing miners to engage in scaling work while in aerial bucket, which is suspended 25 feet above mine floor, without wearing safety belts violates 30 CFR §57.15-5, which requires that safety belts be worn where there is danger of falling, because scaling process requires men to shift their weight and position while in bucket so that there is danger of falling from bucket and danger of falling rock striking bucket and causing it to tip over.
	UNITED NUCLEAR-HOMESTAKE PARTNERS CENT 79-377-M September 3, 1980 ALJ - Final 9/80 p2489*	Provisions of 30 CFR 57.15-5 require that safety belts and lines be worn where there is danger of falling, and operator violates standard when employee failed to attach safety belt to safety line when he climbed onto conveyance, because there was possibility of his falling off conveyance and into open shaft.
30 CFR 57.15-6	MAGMA COPPER COMPANY DENV 78-574-PM July 3, 1979 ALJ - Review Dismissed 7/79 p837*	Evidence that workers immersed bare hands in solvent which, according to manufacturer's label, may cause skin irritation, and that protective gloves were not provided or used, establishes violation of 30 CFR §57.15-6
30 CFR 57.18-10	TEXAS ARCHITECTURAL AGGREGATES, INC. CENT 79-16-M October 28, 1980 ALJ - Final 10/80 p3124	
30 CFR 57.18-28 (d)	TEXAS ARCHITECTURAL AGGREGATES, INC. CENT 79-16-M October 28, 1980 ALJ - Final 10/80 p3124	
30 CFR 57.19-70	HECLA MINING COMPANY WEST 79-251-M April 1, 1980 ALJ - Review Denied 4/80 p793*	Operator's safety program and its efforts to enforce it do not relieve operator of liability for violation of 30 CFR §57.19-70 caused by skiptender's opening of cage door of shaft hoist while men were being hoisted; operator's lack of fault, however, is relevant to determination of appropriate penalty.

Section of Act/Reg	Case Identification	Summary
30 CFR 57.19-100	SUNSHINE MINING COMPANY DENV 79-99-PM October 3, 1979 ALJ - Final 10/79 p1535*	Requirement under 30 CFR §57.19-100 that shaft landings be equipped with safety gates to prevent materials from going into shaft does not extend to skip or loading pockets. Inspector incorrectly relied on possibility of miner falling into shaft in citing violation of 30 CFR §57.19-100, since that standard, which requires that safety gates be installed on shaft landings to preclude materials from falling into shaft, does not address itself to protection of men falling into shaft.
	UNITED NUCLEAR-HOMESTAKE PARTNERS CENT 79-377-M September 3, 1980 ALJ - Final 9/80 p2489*	Hole in shaft landing gate which is approximately one by one and a half feet is large enough for materials to fall through and therefore constitutes violation of 30 CFR 57.19-100.
30 CFR 57.19-106	UNITED NUCLEAR-HOMESTAKE PARTNERS CENT 79-377-M September 3, 1980 ALJ - Final 9/80 p2489*	Operator violates 30 CFR 57.19-106 which requires that shaft sets be maintained in good condition when inspection reveals that one shaft set was broken and 10 to 12 other sets were loose.
30 CFR 57.20-3	MAGMA COPPER COMPANY DENV 79-320-PM August 9, 1979 ALJ - Final 8/79 p1015	
	MAGMA COPPER COMPANY DENV 79-433-PM December 18, 1980 US Appeals 9th Cir N/A*	Determination by Federal Mine Safety and Health Review Commission that aisle is passageway within meaning of 30 CFR 57.20-3 is affirmed because such determination has been specifically delegated to Commission's specialized knowledge and is entitled to deference, and substantial evidence supports Commission's finding.

Section of Act/Reg	Case Identification	Summary
30 CFR 57.20-3		Although wider walkway existed on west side of belt, area with accumulation on east side of belt constituted passageway and violation of 30 CFR §57.20-3 where area was available for transit from one end of beltway to other, was only way to reach east side of beltway, and was used by workers.
30 CFR 57.20-20	MULZER CRUSHED STONE COMPANY LAKE 80-57-M September 3, 1980 ALJ - Review Granted 9/80 p2497	
30 CFR 57.21-78	FMC CORPORATION WEST 79-167-M May 14, 1980 ALJ - Final 5/80 p1098*	Dismissal of citation for violation of 30 CFR §57.21-78 for failure to maintain machinery in permissible condition is justified when there is substantial evidence that operator had tagged equipment out of service prior to inspection, and only evidence that machinery had been used while in impermissible condition was inspector's discovery of warm electrical boxes on machinery.
30 CFR 70.100	HILO COAST PROCESSING COMPANY DENV 79-50-M July 13, 1979 ALJ - Review Granted 7/79 p895	
30 CFR 70.100 (b)	ALABAMA BY-PRODUCTS CORPORATION SE 79-33 October 8, 1980 RC - Reversing & Remanding 10/80 p2760*	Judge's conclusion, that respirable dust standard, 30 CFR 70.100(b), was unenforceable because definition of respirable dust was particulates 6 microns or less in diameter and Mine Safety and Health Administration's collecting devices were not limited to collecting particles 5 microns or less in diameter, is reversed because in 1977 amendments to 1969 Act Congress repealed 5 micron definition and defined respirable dust through collection devices already approved by Secretary of Interior and Secretary of Health, Education, and Welfare.

Section of Act/Reg	Case Identification	Summary
30 CFR 70.100 (b)	BETSY-ANN COAL COMPANY NORT 76-252-P June 13, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-320-P August 17, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 76-140 June 22, 1978 ALJ - Final Unbound*	Withdrawal order which is issued for failure to abate violation of 30 CFR §70.100 (respirable dust), must be vacated when in setting reasonable time for abatement, inspector fails to consider limited short- term hazard to miners, difficulty in achieving abatement, difficulty in obtaining equipment, and time required to abate after receiving results of post-notice sampling.
	KANAWHA COAL COMPANY WEVA 80-150 June 27, 1980 ALJ - Review Granted 6/80 p1658	
	KANAWHA COAL COMPANY WEVA 80-40 June 24, 1980 ALJ - Review Granted 6/80 p1576	
	OLD BEN COAL COMPANY LAKE 79-238 July 25, 1980 ALJ - Review Granted 7/80 p1929	
	OLGA COAL COMPANY HOPE 79-113-P October 8, 1980 RC - Reversing & Remanding 10/80 p2769*	Judge's rejection of proposed settlement and vacation of citation because of his view that respirable dust standard, 30 CFR 70.100(b), is unenforceable, without first seeking argument from parties, were erroneous because Administrative Procedure Act requires that judge give parties opportunity to be heard on question of enforceability of standard before dismissing action.

Section of Act/Reg	Case Identification	Summary
30 CFR 70.100 (b)	STANSBURY COAL COMPANY DENV 77-80-P May 16, 1979 ALJ - Final 5/79 p404*	MSHA's laboratory analysis of 10 mine air samples that reveals average respirable dust concentration in excess of applicable limit in 30 CFR §70. 100(b), does not establish violation of that section, in light of Interior Board of Mine Operations appeals decision that air sampling techniques and laboratory analysis methods used do not screen out particulates larger in size than those defined as respirable dust in 1969 Coal Act of regulations issued pursuant to Act.
	THE VALLEY CAMP COAL COMPANY MORG 79-77-P October 4, 1979 ALJ - Final 10/79 p1558	
30 CFR 70.100 (e)	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
30 CFR 70.101	PENN ALLEGH COAL COMPANY, INC. PENN 80-271-R December 18, 1980 ALJ - Final 12/80 p3678	
30 CFR 70.200	P M & B COAL COMPANY, INC. NORT 78-13-P June 13, 1978 ALJ - Final Unbound*	Civil penalty cases involving alleged respirable dust violations occurring prior to the amendment of definition of respirable dust in Federal Mine Safety and Health Act of 1977 should be disposed of on basis of settlement agreement reached on May 10, 1978, in which it was agreed that operators would pay $9 per alleged violation.
30 CFR 70.201	P M & B COAL COMPANY, INC. NORT 78-13-P June 13, 1978 ALJ - Final Unbound*	

Section of Act/Reg	Case Identification	Summary
30 CFR 70.201	SHADE COAL COMPANY WILK 78-301-P August 25, 1978 ALJ - Final Unbound	
30 CFR 70.203	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 70.206	KANAWHA COAL COMPANY WEVA 80-150 June 27, 1980 ALJ - Review Granted 6/80 p1658	
	KANAWHA COAL COMPANY WEVA 80-40 June 24, 1980 ALJ - Review Granted 6/80 p1576	
30 CFR 70.210 (b)	OLD BEN COAL COMPANY LAKE 79-238 July 25, 1980 ALJ - Review Granted 7/80 p1929	
30 CFR 70.211	EASTERN ASSOCIATED COAL CORPORATION HOPE 76-140 June 22, 1978 ALJ - Final Unbound*	
30 CFR 70.220 (a)(3)	BETSY-ANN COAL COMPANY NORT 76-252-P June 13, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 76-140 June 22, 1978 ALJ - Final Unbound*	
30 CFR 70.230((b)	BETSY-ANN COAL COMPANY NORT 76-252-P June 13, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 70.246	BETSY-ANN COAL COMPANY NORT 76-252-P June 13, 1978 ALJ - Final Unbound	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 70.250	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 70.250 (a)	CO-OP MINING CO DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
	CO-OP MINING COMPANY DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
30 CFR 70.260	SOLAR FUEL COMPANY PENN 80-96 August 27, 1980 ALJ - Final 8/80 p2433*	Citation for violation of 30 CFR 70.260, which requires that at conclusion of each production shift in sampling cycle operator promptly collect and transmit respirable dust samples, must be vacated when operator produces evidence which conclusively establishes that valid samples were taken as required and were transmitted to MSHA in manner prescribed by regulation.

Section of Act/Reg	Case Identification	Summary
30 CFR 70.264	P M & B COAL COMPANY, INC. NORT 78-13-P June 13, 1978 ALJ - Final Unbound*	
30 CFR 70.270	OLD BEN COAL COMPANY VINC 77-61-P April 28, 1978 ALJ - Final Unbound*	Operator has burden of going forward with evidence that sampling taken by personal dust sampler was for its own use, and therefore outside scope of 30 CFR 70.270, where sampling would not likely be undertaken except for existence of governmental regulations, and operator's sampling is for apparent purpose of aiding it in meeting regulatory requirements, operator uses same equipment, sampling is conducted in same manner as that for compliance purposes, and operator can easily identify its own sampling.
30 CFR 70.501	REPUBLIC STEEL CORPORATION MORG 78-304-P February 5, 1979 ALJ - Final Unbound	
30 CFR 70.506	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
30 CFR 70.508	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
30 CFR 70.509	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 70.510	DAVID PASULA PITT 78-458 March 5, 1979 ALJ - Review Granted 3/79 p69	
30 CFR 71.101	HOWARD STEPP COAL COMPANY PIKE 78-30-P July 13, 1978 ALJ - Final Unbound	
30 CFR 71.106 (c)	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 71.108	UTAH INTERNATIONAL, INC. WEST 79-237 April 2, 1980 ALJ - Final 4/80 p798*	Operator satisfied requirement of 30 CFR §71.108 that dust samples for its employees be collected even though data card sent to MSHA had incorrect social security number for one miner and sample was not taken for second miner whose employment had terminated without notification to MSHA.
30 CFR 71.302	HOWARD STEPP COAL COMPANY PIKE 78-30-P July 13, 1978 ALJ - Final Unbound	
30 CFR 71.400	LEAFCO COMPANY, INC. BARB 78-171-P April 25, 1978 ALJ - Final Unbound	
30 CFR 71.500	COALTRAIN CORPORATION MORG 79-26-P January 23, 1980 ALJ - Show Cause Order 2/80 p511	

Section of Act/Reg	Case Identification	Summary
30 CFR 71.600	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.1	THE VALLEY CAMP COAL COMPANY WEVA 79-111 March 28, 1980 ALJ - Review Denied 3/80 p756*	Tunnel which contains conveyor belt that moves coal extracted from adjacent mine and which has immediate overburden that consists of 12 inches of coal is underground coal mine covered by Part 75 of 30 CFR rather than Part 77.
30 CFR 75.2(c)	PEABODY COAL COMPANY VINC 78-52-P June 29, 1978 ALJ - Final Unbound	
30 CFR 75.2(c) (3)	PEABODY COAL COMPANY VINC 78-52-P June 29, 1978 ALJ - Final Unbound	
30 CFR 75.2(g) (2)	PEABODY COAL COMPANY VINC 78-52-P June 29, 1978 ALJ - Final Unbound	
30 CFR 75.2(h)	SEWELL COAL COMPANY HOPE 78-679-P June 27, 1979 ALJ - Final 6/79 p691	
30 CFR 75.2(k)	ALABAMA BY-PRODUCTS CORPORATION SE 79-110 February 12, 1980 ALJ - Review Granted 2/80 p407 or 422	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.2(k)	THE NORTH AMERICAN COAL CORPORATION LAKE 79-118 February 12, 1980 ALJ - Review Denied 2/80 p405	
30 CFR 75.200	ALABAMA BY-PRODUCTS CORPORATION BARB 78-146-P September 21, 1978 ALJ - Final Unbound	
	ALABAMA BY-PRODUCTS CORPORATION BARB 78-358-P November 2, 1978 ALJ - Final Unbound	
	ALABAMA BY-PRODUCTS CORPORATION BARB 78-601 July 18, 1979 ALJ - Final 7/79 p914*	Violation of 30 CFR §75.200 did not result from unwarrantable failure to comply with roof control plan when violation was inadvertent and occurred shortly before inspector arrived on scene despite genuine efforts on part of operator to avoid such violation.
	AMERICAN COAL COMPANY DENV 78-525-P June 29, 1979 ALJ - Final 6/79 p758*	Where MSHA has approved roof control plan and plan does not require individual machine approval, use of roof bolter without approval plate does not violate 30 CFR §75.200. Fact that roof control plan does not logically require replacement of knocked out roof supports is no defense to violation of 30 CFR §75.200 since under that theory, no roof control plan would ever constitute standard by which control of roof could be evaluated.
	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	AMHERST COAL COMPANY WEVA 79-222 July 24, 1980 ALJ - Final 7/80 p1872*	Operator violates 30 CFR §75.200 for failure to comply with approved roof control plan when it holes through accessible area despite absence of permanent support and when it permits machinery to work inby unsupported roof, even though procedure was utilized to cope with problems caused by roof fall in cited area.
	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
	B B & W COAL COMPANY, INC. PIKE 78-36-P June 22, 1978 ALJ - Final Unbound	
	B B & W COAL COMPANY, INC. PIKE 78-63-P October 11, 1978 ALJ - Final Unbound	
	BETHLEHEM MINES CORPORATION PITT 79-91-P May 30, 1980 ALJ - Final 6/80 p1265*	Operator violates provision of 30 CFR §75.200 when less than minimum number of temporary roof supports required by its roof-control plan are installed, but operator is not responsible for death of miner who disregarded orders of foreman and proceeded to work in area before it was properly supported.
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	BRAZTAH CORPORATION DENV 78-5-P June 22, 1978 ALJ - Final Unbound	

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Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	C C C POMPEY COAL COMPANY, INC. PIKE 79-125-P January 28, 1980 ALJ - Review Granted 1/80 p163	
	CAMBRIDGE MINING CORPORATION DENV 77-7-P August 3, 1979 RC 8/79 p987*	Although mine operator assigned its miners to other areas until loose ribs in roof of entry were properly supported, operator's failure to specifically withdraw miners from area or post danger signs supports finding of violation of 30 CFR §75.200.
	CANTERBURY COAL COMPANY PITT 78-127 April 21, 1978 ALJ - Review Granted Unbound	
	CLINCHFIELD COAL COMPANY VA 79-66 October 17, 1980 ALJ - Final 10/80 p3026*	Unprotected cavity in roof of underground coal mine does not violate 30 CFR 75.200 where provision of roof control plan requires that persons not work under unsupported roof except to install temporary supports was complied with.
	CONSOLIDATION COAL COMPANY HOPE 78-205-P September 21, 1979 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY HOPE 78-433-P April 30, 1979 ALJ - Final 4/79 p286	
	CONSOLIDATION COAL COMPANY MORG 77-56 December 6, 1978 ALJ - Review Denied Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	CONSOLIDATION COAL COMPANY MORG 79-70 June 15, 1979 ALJ - Final 6/79 p542*	Fact that roof support violations existed for several days justifies finding of knowledge of violations on part of mine operator and of unwarrantable failure to comply with 30 CFR §75.200, and supports issuance of withdrawal order under Section 104(d)(2) of 1977 Act. Operator's assertion that roof control violations were not correct because section was idle and miners were on vacation demonstrates operator's knowledge and unwarrantable failure. Beginning abatement of roof support violations several hours before issuance of order of unwarrantable failure does
	CONSOLIDATION COAL COMPANY PENN 80-16-R May 9, 1980 ALJ - Final 5/80 p1084	
	CONSOLIDATION COAL COMPANY WEVA 80-13-R May 30, 1980 ALJ - Final 5/80 p1173*	Issuance of withdrawal order pursuant to §104(c) of Federal Mine Safety and Health Act of 1977 is justified when operator is cited for violation of its roof control plan and specified time for abatement is two hours and 41 minutes and, six days after issuance of citation, condition has not been adequately abated.
	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 77-36 April 14, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-109 May 30, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-215-P August 31, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-606-P May 31, 1979 ALJ - Final 5/79 p434*	Regulatory scheme contemplates treating two alleged infractions of 30 CFR §75.200 for existence of crosscut corner widths exceeding roof control plan specifications and for absence of additional rib supports, as separate violations, even though both are cited in same notice of violation and increased hazard of roof fall is attributable to concurrence of both infractions, since topics are addressed in separate mandatory safety standards. MSHA establishes violation of 30 CFR §75.200 for existence of crosscut corners measuring 22 to 24 feet in width when roof control plan required 20-foot width, where operator did not object at hearing or in post-hearing brief to inspector's logical method of measuring widths and where inspector failed to state width at each intersection measured and operator did not mention such failure in its brief, but operator was aware of importance of precise measurements and is therefore deemed to have knowingly waived any objection to MSHA's failure to establish specific width for each intersection.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200		Violation of 30 CFR §75.200 is not established by absence of additonal rib supports required by roof control plan where mining height is 72 inches or more, since inspector failed to connect 72-inch height with specific missing rib support and operator's testimony indicates that 30 to 40 percent of area had mining height of less than 72 inches and therefore did not require additional support.
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-607-P June 21, 1979 ALJ - Final 6/79 p602	
	EASTERN ASSOCIATED COAL CORPORATION MORG 78-35 July 6, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION PITT 77-58 May 11, 1978 ALJ - Final Unbound	
	EASTERN COAL CORPORATION PIKE 79-42-P November 2, 1979 ALJ - Final 11/79 p1837	
	EASTOVER MINING COMPANY BARB 79-198-P June 4, 1979 ALJ - Final 6/79 p490	
	EASTOVER MINING COMPANY NORT 78-54-P November 8, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	GEX COLORADO, INC. WEST 80-306-R June 9, 1980 ALJ - Final 6/80 p1347*	Dismissal of unwarrantable failure portion of citation issued for violation of 30 CFR §75.200 is justified when Mine Safety and health Administration fails to provide persuasive evidence that company knew or should have known that continuous miner was being operated under unsupported roof.
	HARMAN MINING CORPORATION NORT 79-14-P August 30, 1979 ALJ - Final 8/79 p1264	
	HARMAR COAL COMPANY PITT 78-129 March 31, 1978 ALJ - Final Unbound	
	HUBERT WILLIAMS VINC 78-102-P August 31, 1979 ALJ - Final 8/79 p1292*	Section foreman is liable under §109(c) of Federal Coal Mine Health and Safety Act of 1969 because operator violated 30 CFR §75.200, foreman acted as agent of corporate operator, and foreman knew about existence of exposed roof rock and permitted activities to proceed in violation of roof control plan.
	ISLAND CREEK COAL COMPANY HOPE 78-300 July 12, 1978 ALJ - Final Unbound	
	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
	ISLAND CREEK COAL COMPANY HOPE 79-197-P February 25, 1980 ALJ - Final 2/80 p520*	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	ITMANN COAL COMPANY HOPE 78-347 October 12, 1979 ALJ - Final 10/79 p1591*	Inspector correctly issued citation under §104(d)(1) of 1977 Act for unwarrantable failure to comply with 30 CFR §75.200, since operator knew about cracked roof before mining commenced and chose to add posts for support, which would leave room for mining machine, rather than to add cross-bars or roof bolts, which would have provided adequate additional support, as required by approved roof control plan.
	ITMANN COAL COMPANY HOPE 78-690-P December 5, 1979 ALJ - Final 12/79 p2134	
	ITMANN COAL COMPANY WEVA 80-7-R June 26, 1980 ALJ - Final 6/80 p1643*	Imminent danger withdrawal order for violation of 30 CFR §75.200 is properly issued when miner is seen travelling under cracked and unsupported roof and evidence establishes that it was practice of miners to travel under unsupported roof, because such practice could be expected to cause death or serious physical harm before practice could be abated.
	JIM WALTER RESOURCES, INC. SE 80-43-R November 14, 1980 ALJ - Final 11/80 p3276	
	JONES & LAUGHLIN STEEL CORPORATION PENN 80-53 August 27, 1980 ALJ - Final 8/80 p2349	
	KANAWHA COAL COMPANY HOPE 79-66 January 24, 1979 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	KAREY-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
	KENTLAND-ELKHORN COAL CORPORATION PIKE 79-44-P November 28, 1979 ALJ - Final 11/79 p1916	
	LEECHBURG MINING COMPANY PITT 78-420-P June 27, 1979 ALJ - Final 6/79 p632*	Operator violates 30 CFR §75.200 when row of temporary supports are six feet to six feet 10 inches from right rib and roof control plan mandates that supports be not more than five feet from rib.
	LEECO, INC. BARB 78-117-P April 28, 1978 ALJ - Final Unbound	
	LEECO, INC. BARB 78-118-P July 10, 1978 ALJ - Final Unbound	
	LEECO, INC. BARB 78-453-P July 16, 1979 ALJ - Final 7/79 p903	
	LEECO, INC. KENT 79-112 April 14, 1980 ALJ - Review Denied 4/80 p876*	Operator violated roof-control plan required by 30 CFR §75.200 by allowing miners to work inby roofs which were only temporarily supported but which were required by plan to be permanently supported even though there was confusion as to precise meaning and application of plan.
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	LITTLE EGYPT COAL COMPANY VA 80-85 December 18, 1980 ALJ - Final 12/80 p3721*	Operator violates requirements of 30 CFR 75.200 by failing to comply with its approved roof-control) plan that requires roof bolt holes to be drilled at intervals not to exceed 15 feet because, for distance of 300 feet, roof-bolt test holes had not been drilled at 15-foot intervals. Operator violates requirements of 30 CFR 75.200 (compliance with approved roof-control plan when mine entry of 24 to 28 feet wide is found and approved roof control plan permits maximum width of 20 feet; overwide entry could result in weakened roof and possible roof fall.
	MATHIES COAL COMPANY PENN 80-277 December 30, 1980 ALJ - Final 12/80 p3740	
	MATHIES COAL COMPANY PITT 77-39-P May 5, 1978 ALJ - Final Unbound	
	MICHAEL JILES WEVA 80-59 September 11, 1980 ALJ - Final 9/80 p2570	
	OLD BEN COAL COMPANY VINC 77-126-P May 3, 1978 ALJ - Final Unbound	
	OLGA COAL COMPANY WEVA 80-124 July 23, 1980 ALJ - Final 7/80 p1862*	Measurements made by Mine Safety and Health Administration inspectors of initial cuts of coal in pillars of cited area and placement of roof supports may be used as evidence to establish that company violated 30 CFR 75.200 by allowing continuous mining machine to operate under unsupported roof, in violation of its roof-control plan.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	PARAMONT MINING COMPANY NORT 79-51-P November 15, 1979 ALJ - Review Granted 12/79 p2211	
	PEABODY COAL COMPANY BARB 78-474-P August 29, 1979 ALJ - Final 8/79 p1155	
	PEABODY COAL COMPANY BARB 78-606-P March 26, 1979 ALJ - Final 3/79 p143*	Existence of entries and crosscuts that were driven in widths exceeding 20-foot width called for in approved roof control plan constitutes violation of 30 CFR §75.200, since roof plan is controlling, while 1974 MESA Inspector's Manual, which defines term inches or more" than planned opening width, does not have force of law and is not controlling, and excessive widths are prevalent and due to poor mining practices.
	PEABODY COAL COMPANY BARB 78-655-P August 29, 1979 ALJ - Final 8/79 p1121*	Inadequately supported roof at entry of mine constituted violation of 30 CFR §75.200, even though not in violation of mine operator's approved roof control plan, where there were inadequate number of supports present, rocks were observed hanging from roof of cavity and miners were seen passing beneath cavity.
	PEABODY COAL COMPANY BARB 78-689-P May 7, 1980 ALJ - Final 6/80 p1211*	Lack of sufficient evidence that bolts of roof supports were loose preceding roof fall and that miner was working under unsupported roof when accident occurred requires dismissal of citation for violation of 30 CFR §75.200 because occurence of roof fall is not prima facie evidence of operator's failure to follow roof control plan as fall itself could have loosened bolts of roof supports.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	PEABODY COAL COMPANY DENV 77-57-P October 11, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY KENT 79-107-R October 29, 1979 ALJ - Final 10/79 p1724*	Finding of imminent danger is affirmed since resin bolts were not anchored thoroughly, water was seeping through roof strata, ominous cracks had appeared in roof, and nearby roof had previously required rebolting with longer bolts than were normally used.
	PEABODY COAL COMPANY KENT 80-124 April 29, 1980 ALJ - Review Dismissed 4/80 p987*	Mine management's superficial response to miners' complaint of separations in roof strata, its failure to adequately examine area for potential safety violations, and its refusal to provide supplemental supports for hazardous roof conditions constitutes high degree of negligence which justifies assessment of substantial penalty against operator for violating requirements of 30 CFR 75.200 which states that roofs must be adequately supported.
	PEERLESS EAGLE COAL COMPANY HOPE 78-511-P April 6, 1979 ALJ - Final 4/79 p209	
	PEGGY-O COAL COMPANY, INC. VA 79-41 July 23, 1980 ALJ - Final 7/80 p1852*	Operator violates 30 CFR §75.200 for failure to comply with approved roof control plan when plan requires installation of 30-inch roof bolts and operator installs 18-inch roof bolts, even though shorter bolts had been installed for purpose of holding electrical wires, because it would have been possible to install both shorter bolts and required 30-inch bolts.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	PENN ALLEGH COAL COMPANY, INC. PITT 78-390-P February 28, 1979 ALJ - Final Unbound*	Ambiguity of operator's roof control plan with regard to when temporary supports are required precludes finding of violation of 30 CFR §75.200; MSHA, which approved plan, must make effort to clarify plan.
	PIKEVILLE COAL COMPANY PIKE 78-76-P September 19, 1978 ALJ - Final Unbound	
	PONTIKI COAL CORPORATION PIKE 78-420-P October 25, 1979 RC - Appealed - Dismissed 10/79 p1476*	Evidence that widths of entries and crosscuts exceeded maximum allowed by approved roof control plan by three feet or more at seven locations, even if undercuts of up to 12 inches are excluded from measurement, supports judge's finding of violation of 30 CFR §75.200.
	PRITT EVERETT L. MORG 76-56-P March 10, 1978 ALJ - Final Unbound	
	QUARTO MINING COMPANY LAKE 80-44-R April 18, 1980 ALJ - Final 4/80 p925*	Foreman is placed on sufficient notice of potential safety violation when miners make unusual inquiry concerning setting of roof supports so that failure to check for potential violation and failure to make required methane tests which would have led to discovery of violation constitutes an unwarrantable failure to comply with known violation, as negligence of foreman is imputed to operator and justifies issuance of withdrawal order pursuant to Section 104(d)(2) of Federal Mine Safety and Health Act of 1977.
	RANGER FUEL CORPORATION HOPE 78-327-P October 6, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
	REPUBLIC STEEL CORPORATION PITT 78-315-P January 11, 1979 ALJ - Final Unbound	
	RITA COAL COMPANY KENT 79-52 March 5, 1980 ALJ - Final 3/80 p652	
	ROBINSON-PHILLIPS COAL COMPANY HOPE 77-313-P April 5, 1979 ALJ - Final 4/79 p146	
	ROCHESTER & PITTSBURGH COAL COMPANY PITT 77-100 January 5, 1979 ALJ - Final Unbound*	Operator's actions in violation of roof control plan did not constitute unwarrantable failure to comply with 30 CFR §75.200 when violation resulted from efforts to correct hazardous condition, and roof was properly supported as soon as possible.
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SEWELL COAL COMPANY HOPE 78-330-P June 29, 1979 ALJ - Final 6/79 p720*	Failure to install temporary supports in area that is covered with water and gob does not constitute violation of 30 CFR §75.200 when roof control plan requires all supports to be installed on solid footing.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	SEWELL COAL COMPANY HOPE 78-44 March 30, 1978 ALJ - Final Unbound*	Operator's placement of temporary supports eight feet from last permanent supports and its placement of danger board outby area of unsupported roof consitutes violation of 30 CFR 75.200 where roof control plan requires installation of temporary supports on five-foot centers to within five feet of face, rib, or temporary or permanent support and nothing in plan permits operator to set up danger board in lieu of providing temporary supports as soon as they were found to be missing. Preshift examiner's immediate posting of danger board and report of hazardous roof condition so its existence could be entered in preshift examination record book does not absolve operator of charge of unwarrantable failure to comply with 30 CFR 75.200 where roof is hazardous and record does not show that section foreman acted with due diligence in having temporary supports installed as required by roof control plan.
	SEWELL COAL COMPANY HOPE 78-679-P June 27, 1979 ALJ - Final 6/79 p691	
	SEWELL COAL COMPANY HOPE 78-744-P February 12, 1980 ALJ - Review Granted 2/80 p392	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-636-P June 25, 1979 RC - Appealed - Remanded 6/79 p608*	Evidence that accident was not caused by deviation from roof control plan precludes finding of violation of 30 CFR §75.200 when specifics of violation are not spelled out in charge.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	SIMRON FUEL COMPANY HOPE 78-422-P April 5, 1979 ALJ - Final 4/79 p142	
	SKYVIEW MINING, INC. PIKE 78-365-P April 17, 1979 ALJ - Final 4/79 p230	
	SOUTHERN OHIO COAL COMPANY VINC 79-109-P October 19, 1979 ALJ - Final 10/79 p1642*	Standard, 30 CFR §75.200 was violated where roof control plan required that temporary roof supports be installed within 15 minutes after loading has been completed and inspector determined passage of more than 15 minutes from fact that two-thirds of loading cycle had been completed and it would take more than 15 minutes to accomplish this. Violation of 30 CFR §75.200 was established where company failed to install temporary roof supports at end of mining cycle as required by its roof control plan and company failed to establish that mining cycle had not been completed.
	SOUTHERN OHIO COAL COMPANY VINC 79-227-P February 8, 1980 ALJ - Review Granted 2/80 p350	
	THE NORTH AMERICAN COAL CORPORATION VINC 78-312-P January 11, 1979 ALJ - Final Unbound	
	U S FUEL COMPANY DENV 78-414-P August 29, 1979 ALJ - Final 8/79 p1113	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200	UNITED STATES STEEL CORPORATION HOPE 79-152 September 19, 1979 ALJ - Final 9/79 p1371	
	UNITED STATES STEEL CORPORATION PENN 79-97 May 14, 1980 ALJ - Final 6/80 p1225*	Operator violates its approved roof control plan and 30 CFR §75.200 when plan permits mining of entries to 16-foot width, with tolerances of 12 inches on width openings allowed at intermittent locations, and measurement of entries establishes that width was excessive in numerous areas, not at intermittent locations.
	UNITED STATES STEEL CORPORATION WEST 80-312-R October 17, 1980 ALJ - Final 10/80 p3022	
	UNITED STATES STEEL CORPORATION WEVA 79-343-R June 25, 1980 ALJ - Final 6/80 p1631*	Issuance of unwarrantable failure withdrawal order is justified when operator violates its roof control plan by maintaining openings wider than allowed without installing posts, and evidence shows that company knew what plan required and there was no amendment to plan which would allow company to disregard need for posts.
	WESTERN STATES COAL CORPORATION DENV 78-521-P March 1, 1979 3/79 p27	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200		Fact that face boss may not have been in area during cleanup or when citation issued for violation of 30 CFR §75.200, for failure to follow roof control plan, is immaterial to question of whether company failed to exercise reasonable care to prevent violation, since operator is presumed to know requirements of his own roof control plan and section foreman is responsible for seeing that plan is followed during working shift.
	WESTMORELAND COAL COMPANY HOPE 77-326-P October 13, 1978 ALJ - Final Unbound	
	YOUNGSTOWN MINES CORPORATION HOPE 78-22 May 10, 1978 ALJ - Final Unbound	
30 CFR 75.200-14	SOUTHERN OHIO COAL COMPANY VINC 79-227-P February 8, 1980 ALJ - Review Granted 2/80 p350	
30 CFR 75.200-14(a)	SOUTHERN OHIO COAL COMPANY VINC 79-227-P February 8, 1980 ALJ - Review Granted 2/80 p350	
30 CFR 75.200-14(b)	SOUTHERN OHIO COAL COMPANY VINC 79-227-P February 8, 1980 ALJ - Review Granted 2/80 p350	
30 CFR 75.200-14(c)	SOUTHERN OHIO COAL COMPANY VINC 79-227-P February 8, 1980 ALJ - Review Granted 2/80 p350	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.200-14(d)(1)	SOUTHERN OHIO COAL COMPANY VINC 79-227-P February 8, 1980 ALJ - Review Granted 2/80 p350	
30 CFR 75.200-14(e)	SOUTHERN OHIO COAL COMPANY VINC 79-227-P February 8, 1980 ALJ - Review Granted 2/80 p350	
30 CFR 75.200-14(f)	SOUTHERN OHIO COAL COMPANY VINC 79-227-P February 8, 1980 ALJ - Review Granted 2/80 p350	
30 CFR 75.201	THE VALLEY CAMP COAL COMPANY MORG 79-77-P October 4, 1979 ALJ - Final 10/79 p1558	
30 CFR 75.202	CO-OP MINING CO DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
	CO-OP MINING COMPANY DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY PENN 80-149 August 27, 1980 ALJ - Final 8/80 p2449	
	EASTOVER MINING COMPANY BARB 79-198-P June 4, 1979 ALJ - Final 6/79 p490	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.202	EASTOVER MINING COMPANY NORT 78-54-P November 8, 1978 ALJ - Final Unbound	
	GRUNDY MINING COMPANY, INC. BARB 78-168-P June 19, 1978 ALJ - Review Denied & Appealed Unbound	
	LEECHBURG MINING COMPANY PITT 78-420-P June 27, 1979 ALJ - Final 6/79 p632*	Operator violates 30 CFR §75.202 when fallen roof materials exist along 3,500 fee of track haulage road and operator knew history and extent of "spalling" problem in mine, even though limited inspection and removal procedures were employed.
	PEABODY COAL COMPANY BARB 77-245-P April 28, 1978 ALJ - Review Granted Unbound	
		Term "rib" as used in provision of 30 CFR §75.202 requiring overhanging ribs to be taken down or supported covers entire wall of entry, including coal seam and any rock above seam.
	PYRO MINING COMPANY KENT 80-39 October 17, 1980 ALJ - Final 10/80 p3006	
	ROCHESTER & PITTSBURGH COAL COMPANY PITT 77-100 January 5, 1979 ALJ - Final Unbound*	No unwarrantable failure to comply with 30 CFR §75.202 occurred when operator regularly removed loose rock and overhang observed by inspector proved very difficult to take down.
		Notice of violation of requirement under 30 CFR §75.202 that suitable materials be provided for roof control is vacated since standard applies only to working places in mine and inspector cited company because of loose overhang in nonworking area.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.202	SEWELL COAL COMPANY HOPE 77-310-P March 28, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 78-152-P March 9, 1979 RC - Petition Denied Appealed Unbound	
	SHAMROCK COAL COMPANY BARB 78-152-P January 30, 1979 ALJ - Appealed Unbound*	Standard 30 CFR §75.202 was violated where following roof fall, miners were allowed to travel through area when loose roof was present and before operator began to support loose roof.
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	THE NORTH AMERICAN COAL CORPORATION VINC 78-312-P January 11, 1979 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION WEVA 79-343-R June 25, 1980 ALJ - Final 6/80 p1631*	Unwarrantable failure order issued for violation of 30 CFR §75.202 because loose unsupported ribs existed at three locations in mine must be vacated when evidence shows that loose ribs were not so obvious and dangerous that operator knew or should have known they existed.
	UNITED STATES STEEL CORPORATION WEVA 80-466 September 19, 1980 ALJ - Final 9/80 p2644	
	WINDSOR POWER HOUSE COAL COMPANY WEVA 79-199-R July 3, 1980 ALJ - Final 7/80 p1739*	Question of whether loose and overhanging ribs posed any danger is irrelevant to existence of violation of 30 CFR §75.202.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.206	PEABODY COAL COMPANY KENT 79-107-R October 29, 1979 ALJ - Final 10/79 p1724*	Testimony of MSHA's roof-control specialist that roof was safe does not outweigh testimony of MSHA inspector and operators of roof-bolting machines, since inspector and roof-bolters observed drilling of test holes in roof by roof-bolting machines which indicated that separations existed in roof strata, whereas MSHA specialist had not observed roof-bolting machine in operation.
30 CFR 75.250	LUNAR MINING COMPANY PENN 79-160 March 19, 1980 ALJ - Final 3/80 p732	
30 CFR 75.300-2	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.301	ALABAMA BY-PRODUCTS CORPORATION BARB 78-56 June 9, 1978 ALJ - Final Unbound	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	C F & I STEEL CORPORATION DENV 78-498-P February 22, 1979 ALJ - Final Unbound*	Once crosscut is holed through so as to allow passage of air, operator is required, under 30 CFR §75.301, to install adequate ventilation devices to insure that requisite volume of air reaches places where men are working.
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-215-P August 31, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.301	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-306-P September 27, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION PITT 77-58 May 11, 1978 ALJ - Final Unbound	
	EASTERN COAL CORP PIKE 78-388-P October 6, 1978 ALJ - Final Unbound	
	EASTERN COAL CORPORATION PIKE 78-388-P October 6, 1978 ALJ - Final Unbound	
	EASTERN COAL CORPORATION PIKE 79-42-P November 2, 1979 ALJ - Final 11/79 p1837	
	KAISER STEEL CORPORATION DENV 78-512-P September 9, 1980 ALJ - Review Denied 9/80 p2548*	Excessive concentration of methane can be considered in assessing civil penalty for violation of ventilation requirements of 30 CFR 75.301 because one important reason for ventilation requirement is to "dilute, render harmless, and to carry away ... noxious and harmful gases ... "
	KERMIT COAL COMPANY, INC. HOPE 77-293-P August 3, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY BARB 78-474-P August 29, 1979 ALJ - Final 8/79 p1155	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.301	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 78-387-P February 7, 1979 ALJ - Final Unbound	
	WOLF CREEK COLLIERIES COMPANY PIKE 78-70-P September 21, 1978 ALJ - Review Granted Unbound	
30 CFR 75.301-1	BIG TEN CORPORATION VA 80-30 August 15, 1980 ALJ - Final 8/80 p2266	Violation of 30 CFR 75.301-1 is established when inspector uses anemometer to determine that there is insufficient volume and velocity of air in entry of mine, and operator's argument that condition was created immediately before reading when brattice curtain was knocked down is not defense to violation, because it is likely that more than one problem contributed to loss of velocity and volume.
	P M & B COAL COMPANY, INC. NORT 78-13-P June 13, 1978 ALJ - Final Unbound*	Operator violated 30 CFR §75.301-1 when loading machine was found operating in face of entry where less than minimum quantity of air was reaching face, even though miners had taken air reading before beginning to load coal and had found air to be adequate, because miners should have been able to notice that there was more dust in air than is normal.
	PEABODY COAL COMPANY BARB 78-474-P August 29, 1979 ALJ - Final 8/79 p1155	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.301-4	B B & W COAL COMPANY, INC. PIKE 78-36-P June 22, 1978 ALJ - Final Unbound	
	EASTOVER MINING COMPANY NORT 78-54-P November 8, 1978 ALJ - Final Unbound	
	FREEMAN UNITED COAL MINING COMPANY VINC 78-395-P August 30, 1979 ALJ - Review Granted 8/79 p1235	
30 CFR 75.302	B B & W COAL COMPANY, INC. PIKE 78-36-P June 22, 1978 ALJ - Final Unbound	
	KERMIT COAL COMPANY, INC. HOPE 77-293-P August 3, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 75.302-1	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	
	ISLAND CREEK COAL COMPANY HOPE 79-197-P February 25, 1980 ALJ - Final 2/80 p520*	Citation for violation of requirement in 30 CFR §75.302-1 that line brattice and check curtain extended from last open crosscut out to within 10 feet of point of deepest penetration is not upheld because it was issued between first and second shifts while coal was not actually being cut, mined or loaded from working face.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.302-1	PEABODY COAL COMPANY BARB 78-474-P August 29, 1979 ALJ - Final 8/79 p1155	
30 CFR 75.302-1(a)	THE NORTH AMERICAN COAL CORPORATION VINC 78-312-P January 11, 1979 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION BARB 79-276 August 10, 1979 ALJ - Final 8/79 p1024*	Since operator's ventilation plan imposes requirements no stricter than those contained in 30 CFR §75.302-1(a), which requires that line brattice must be maintained to within ten feet of area of deepest penetration of all working face only when coal is being cut, mined or loaded, there is no violation of 30 CFR §75.316.
30 CFR 75.302-4(a)	GEX COLORADO, INC. WEST 79-28-M December 2, 1980 ALJ - Final 12/80 p3499*	Operator violates 30 CFR 75.302-4 (a) which requires that fans be located and operated so as to avoid any recirculation of air at any time, because air from working face was being recirculated into the air intake entry and thus again travelling to working face.
30 CFR 75.302 (a)	ISLAND CREEK COAL COMPANY HOPE 79-197-P February 25, 1980 ALJ - Final 2/80 p520*	Fall area supported according to minimum requirements of operator's roof control plan but not supported or adequately controlled to protect persons from falls of roof or ribs violates requirement of 30 CFR §75.200.
30 CFR 75.303	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.303	CONSOLIDATION COAL COMPANY PENN 79-105 July 11, 1980 ALJ - Final 7/80 p1809*	Dismissal of citation for violation of 30 CFR §75.303, which provides that coal-carrying belt conveyors be examined after each coal producing shift has begun, is justified when citation was issued only three and one-half hours after production shift had begun because regulation does not require immediate examination of belt conveyors after start of shift and evidence established that operator intended to make examination sometime during shift.
	ITMANN COAL COMPANY HOPE 78-690-P December 5, 1979 ALJ - Final 12/79 p2134	
	PEABODY COAL COMPANY BARB 78-653-P April 3, 1979 ALJ - Final 4/79 p28*	Cited area is "active working" within scope of 30 CFR §75.400 in light of operator's failure to seal and abandon area pursuant to its ventilation plan, despite contentions that work had been completed there, that regular duties such as extracting coal are no longer performed there, that operator did not plan to return there to work, that area had not been preshifted pursuant to 30 CFR §75.303, and that inspector may have contradicted his testimony characterizing area as "active working".
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 78-152-P January 30, 1979 ALJ - Appealed Unbound*	Since 30 CFR §75.303 requires checking of all "active workings", preshift examiner's failure to report lack of ventilation in dead-end headings did not violate mandatory standard because headings were not being worked and miners were not normally required to travel through them. Unrecorded presence of loose roof along travelway constituted hazard in active workings which required reporting by preshift examiner, thus violating 30 CFR §75.303.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.303		Preshift examiner's failure to record lack of posted danger signs in several entries was not violation of 30 CFR §75.303 since miners were not required to pass places where alleged hazards existed and had no reason to be in these idle areas.
30 CFR 75.304	BETHLEHEM MINES CORPORATION PITT 77-50-P August 31, 1979 ALJ - Final 8/79 p1280*	Delay of 35 days in issuance of citation after accident investigation is unreasonable and warrants vacation of citation.
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	THE NORTH AMERICAN COAL CORPORATION VINC 78-312-P January 11, 1979 ALJ - Final Unbound	
30 CFR 75.305	EASTERN ASSOCIATED COAL CORPORATION HOPE 77-262-P July 7, 1978 ALJ - Final Unbound	
	REPUBLIC STEEL CORPORATION MORG 78-304-P February 5, 1979 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 75.306	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.307	B B & W COAL COMPANY, INC. 77-48-P October 25, 1979 RC 10/79 p1479*	Civil penalty for violation of methane test requirement under 30 CFR § 75.307 was dismissed since evidence only that mine foreman did not have methane detector requires impermissible chain of inferences in order to find that no methane tests took place.
	BECKLEY COAL MINING COMPANY HOPE 77-92-P November 15, 1979 RC 11/79 p1794*	Notice of violation adequately describes violation of methane examination requirement in 30 CFR §75.307 when notice contains standard allegedly violated along with written description of condition leading to its issuance.
	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-606-P May 31, 1979 ALJ - Final 5/79 p434*	It is not necessary to determine whether coal had been produced before proper methane test for purposes of finding 30 CFR §75.307 violation, since fact that continuous miner, piece of electrically energized equipment, was operating inby last open crosscut prior to taking methane readings with approved detector is sufficient to establish violation of 30 CFR §75.307.
30 CFR 75.307-1	BECKLEY COAL MINING COMPANY HOPE 77-92-P November 15, 1979 RC 11/79 p1794*	Inspector's methane examination of mine does not satisfy 30 CFR §75.307-1 under 1969 Act since statute imposes duty on operator, not inspector, to perform methane examination. Operator violated 30 CFR §75.307-1 since foreman's methane examination of mine, although made before roof bolter entered crosscut, was not made "immediatley prior" to movement of roof bolter, as required by standard.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.312	CO-OP MINING CO DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
	CO-OP MINING COMPANY DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
30 CFR 75.313	LUNAR MINING COMPANY PENN 79-160 March 19, 1980 ALJ - Final 3/80 p732	
	PARAMONT MINING COMPANY NORT 79-51-P November 15, 1979 ALJ - Review Granted 12/79 p2211	
	PARAMONT MINING COMPANY VA 79-51 September 26, 1980 RC - Reverse & Remand 9/80 p2476*	
		Production of coal is not necessary element of violation of 30 CFR 75.313, which requires that methane monitors on continuous miners be kept operative and be set to de-energize equipment when monitor is not operating properly, and Secretary need not prove that coal was actually being cut, mined, or loaded while monitor was bridged out in order to establish violation.
	WESTERN STATES COAL CORPORATION DENV 78-521-P March 1, 1979 ALJ - Final 3/79 p27*	Coal company exercised good faith in achieving abatement of 30 CFR §75.313 violation for failure to properly maintain methane monitor on scoop, in light of inspector's three-day extension of abatement time to obtain parts, given because the mine is in remote area, inspector's admission that he did not believe company was using as excuse for not complying with abatement, and inspector's concession that parts were probably needed.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.313-1	P M & B COAL COMPANY, INC. NORT 78-13-P June 13, 1978 ALJ - Final Unbound*	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 75.316	ALABAMA BY-PRODUCTS CORPORATION BARB 78-73 June 9, 1978 ALJ - Final Unbound	
	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	C C C POMPEY COAL COMPANY, INC. PIKE 79-125-P January 28, 1980 ALJ - Review Granted 1/80 p163	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.316	C F & I STEEL CORPORATION DENV 77-79-P March 15, 1979 ALJ - Review Denied 3/79 p107*	Presence of tubing intake end in crosscut face and 30 feet from deepest penetration of entry that was to be driven constitutes violation of 30 CFR 75.316, where ventilation plan requires that line curtains or tubing be maintained to within 10 feet from the area of deepest penetration to which any portion of the face has been advanced, and "tubing" refers to intake end of tubing.
	CO-OP MINING CO DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
	CO-OP MINING COMPANY DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	
	DAVIS COAL COMPANY WEVA 80-309 October 21, 1980 ALJ - Final 10/80 p3053*	Evidence that 30 of 35 water sprays on continuous mining machine were clogged and that trickle of water was coming out of other sprays establishes violation of 30 CFR 75.316 despite mine operator's argument that machine would have burned up under such conditions, since water could have leaked out after passing through machine's cooling system.
	DKT COAL COMPANY KENT 79-349 November 20, 1980 ALJ - Final 10/80 p3336*	Operator violates requirements of 30 CFR 75.316 because wing curtain was 30 feet back from face where coal was being mined and approved plan required wing curtain or other approved device to be installed and maintained within 10 feet of point of deepest penetration where coal is being cut, drilled, mined, or loaded.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.316	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-77-P April 30, 1979 ALJ - Final 6/79 p775	
	GEX COLORADO, INC. WEST 79-28-M December 2, 1980 ALJ - Final 12/80 p3499*	Operator violates requirement of 30 CFR 75.316 that operator adopt approved ventilation control plan when plan requires that air velocity of 16,000 cfm be maintained and smoke readings indicate air velocity of only 7,025 cfm in last open cross cut.
	HARMAR COAL COMPANY PITT 78-9 April 26, 1978 ALJ - Final Unbound	
	KAISER STEEL CORPORATION DENV 78-31-P August 3, 1979 EC 8/79 p984*	Evidence that friction and resistance to air flow increase as exhaust tubing length is increased, thereby reducing effectiveness of auxiliary exhaust fan, and that proper air flow was obtained when tubing was shortened and fan was moved closer to face supports finding that placement of fan and tubing was a cause of reduced air flow so as to establish negligence on part of operator. Evidence that velocity of air was substantially less than airflow requirements specified in ventilation plan, and operator was aware of interrelationship between length of tubing and amount of air flow supports judge's conclusion that operator failed to exercise reasonable care to insure that required volume and velocity of air were maintained so as to establish negligence on part of operator.
	KERMIT COAL COMPANY, INC. HOPE 77-293-P August 3, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.316	KITCHEKAN FUEL CORPORATION HOPE 77-281 June 5, 1978 ALJ - Final Unbound	
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	
	MATHIES COAL COMPANY PENN 79-149-R May 21, 1980 ALJ - Final 6/80 p1246*	MSHA's conducting smoke cloud test to calculate air velocities inside mine is valid method of determining whether operator is following approved ventilation plan as required by 30 CFR §75. 316 when inspector is unable to obtain satisfactory reading on anemometer because of insufficient air velocity.
	MICHAEL JILES WEVA 80-59 September 11, 1980 ALJ - Final 9/80 p2570	
	NACCO MINING COMPANY LAKE 80-290 October 31, 1980 ALJ - Review Granted 10/80 p3194	
	PEABODY COAL COMPANY VINC 78-1 December 13, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY VINC 78-455-P April 17, 1979 ALJ - Final 4/79 p237	
	PENN ALLEGH COAL COMPANY, INC. PENN 81-6-R October 21, 1980 ALJ - Review Granted 10/80 p3072	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.316	PETER WHITE COAL MINING CORPORATION HOPE 78-23 April 24, 1979 ALJ - Final 4/79 p255	
	PONTIKI COAL CORPORATION PIKE 78-420-P February 9, 1979 ALJ - Review Granted Unbound	
	QUARTO MINING COMPANY LAKE 79-119 September 22, 1980 ALJ - Review Granted 9/80 p2669	
	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
	ROCHESTER & PITTSBURGH COAL COMPANY PITT 77-116 December 8, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SEWELL COAL COMPANY HOPE 78-44 March 30, 1978 ALJ - Final Unbound*	Operator's failure to comply with ventilation plan requirement that crosscut be provided at face of entry before place is "abandoned" consitutes violation of 30 CFR 75. 316, since operator's failure to properly ventilate unit makes unit "abandoned" within meaning of 30 CFR 75.2(h).

Section of Act/Reg	Case Identification	Summary
30 CFR 75.316	SEWELL COAL COMPANY WEVA 80-264-R August 11, 1980 ALJ - Revied Denied/ Appealed 8/80 p2210*	Although the Mine Safety and Health Administration gave tentative verbal approval and subsequent verbal disapproval of operator's dust control plan, operator's failure to adopt approved dust control plan consitutes violation of 30 CFR 75. 316 where operator is aware that proposed plan was disapproved and had sufficient time to rework proposed plan to meet MSHA's requirements. Existence of approved dust control plan, which had not been disapproved in writing and which operator subsequently abandoned in favor of proposed plan that was disapproved by the Mine Safety and Health Administration, is no defense to violation of 30 CFR 75. 316 when approved plan did not show ventilation equipment in mine at time citation was issued. Operator does not waive its right to raise issue of whether proposed dust control plan should have been approved by the Mine Safety and Health Administration when it files subsequent plan at time it is served with withdrawal order under Section 104(b) of 1977 Act, when operator disputes reasonableness of provisions in plan required by MSHA. Operator fails to show that the Mine Safety and Health Administration's decision not to approve proposed dust control plan was incorrect and that it did not violate 30 CFR 75.316, where operator was given chance to adjust its controls to correspond to proposed plan for purposes of test of plan's efficacy but chose not to do so, and MSHA's test results showed that conditions during test were barely adequate to control dust and that average conditions during test were minimum acceptable.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.316	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	STANSBURY COAL COMPANY DENV 77-80-P May 16, 1979 ALJ - Final 5/79 p404*	Failure of operator to install specific numbers of water sprays to particular locations does not constitute violation of 30 CFR §75.316, where ventilation plan for mine not yet in operation requires operator to install water sprays in transfer, curshing, and loading points after running engineering surveys to determine exact number of sprays needed, their location, and working pressures and volumes, since plan merely requires operator to make reasonable efforts to complete engineering studies and install what it determines to be necessary sprays as mining commences.
	SUNSHINE COLLERIES, INC NORT 78-56-P June 23, 1978 ALJ - Final Unbound	
	THE NORTH AMERICAN COAL CORPORATION VINC 78-312-P January 11, 1979 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION BARB 79-276 August 10, 1979 ALJ - Final 8/79 p1024*	Since operator's ventilation plan imposes requirements no stricter than those contained in 30 CFR §75.302-1(a), which requires that line brattice must be maintained to within ten feet of area of deepest penetration of all working face only when coal is being cut, mined or loaded, there is no violation of 30 CFR §75.316.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.316	WESTERN STATES COAL CORPORATION DENV 78-521-P March 1, 1979 3/79 p27*	Failure of operator to comply with any provision of its ventilation plan constitutes a violation of 30 CFR §75.316, and fact that coal was not being cut or loaded at precise moment that inspector arrived on scene and observed that line curtain had not been advanced as required by ventilation plan is immaterial to issue of fact of violation.
	WINDSOR POWER HOUSE COAL COMPANY WEVA 79-193-R March 10, 1980 ALJ - Review Denied 3/80 p671*	Area where actual mining was temporarily halted by mechanical breakdown is "working face" within meaning of Federal Mine Safety and Health Act of 1977 and operator's failure to take air readings in area, as required by operator's methane and dust control plan for all working faces, constituted violation of 30 CFR §75.316.
30 CFR 75.317	CLINCHFIELD COAL COMPANY NORT 78-325-P January 14, 1980 ALJ - Final 1/80 p25*	Failure to test flame safety lamps in gas box before use in underground methane tests did not violate 30 CFR §75.317 because placing lamps in gas box may destroy, rather than ensure, their permissibility. Failure to clean flame safety lamps before use in underground methane tests does not violate 30 CFR §75.317 because MSHA inspector did not notify operator of what it was being charged with, inspector knew little about condition of lamps, and failure to clean does not necessarily mean that lamp is impermissible.
30 CFR 75.321	JONES & LAUGHLIN STEEL CORPORATION PENN 79-145 March 11, 1980 ALJ - Final 3/80 p678	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.321	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
	THE NORTH AMERICAN COAL CORPORATION VINC 78-312-P January 11, 1979 ALJ - Final Unbound	
30 CFR 75.322	CONSOLIDATION COAL COMPANY MORG 78-337 December 14, 1978 ALJ - Final Unbound	
30 CFR 75.323	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
30 CFR 75.326	AMERICAN COAL COMPANY DENV 79-218-P August 19, 1979 ALJ - Final 8/79 p1057*	Operator violated 30 CFR §75.326 where air current in mine intake air courses was directed to working sections inside mine and not into return and this intake air was main escapeway for mine. Citation for violation of 30 CFR §75.326 was vacated since inspector's evidence was insufficient to prove that air currents in operating belt haulage entry were used to ventilate working places and evidence established that working section was adequately ventilated.
	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.326	LESLIE COAL MINING COMPANY KENT 79-51 September 19, 1980 ALJ - Final 9/80 p2654*	Operator violates 30 CFR 75.326, which provides that entries used as intake and return air courses shall be separated from belt haulage entries, where intake and return air courses were not separated adequately; one stopping was missing between two entries which would have permitted return air carrying methane to get upon belt entry, where electrical components existed, so that explosion might occur.
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	Operator violates 30 CFR 75.326 when holes ranging from one-third inch to two inches in length are found in three permanent stoppings; argument that holes did not extend through blocks is rejected because light check was not made to see if light passed through stoppings.
	OLGA COAL COMPANY HOPE 79-111 October 11, 1979 ALJ - Final 10/79 p1580*	Fact that inspector failed to make specific finding that entries other than beltway entry permitted adequate coursing of intake air in mine and failed to communicate such finding to operator is no defense to violation of 30 CFR §75.326, especially where operator acquiesced in ventilation plan that called for ventilation with air other than that of belt entry. Operator's argument that leakage of air from belt entry was unintentional and did not constitute use of belt air to ventilate active workings in violation of 30 CFR §75.326 is rejected since standard does not require that use of belt entry air be intentional. Operator's failure to keep belt entry air out of working area after it observed that longfall face had become contaminated and that doorway and holes in belt entry stopping provided obvious avenue for smoke from belt to reach working section, constituted unwarrantable failure to comply with 30 CFR §75.326.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.326	PIKEVILLE COAL COMPANY PIKE 78-76-P September 19, 1978 ALJ - Final Unbound	
	REPUBLIC STEEL CORPORATION MORG 78-304-P February 5, 1979 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 75.329	CHRISTOPHER COAL COMPANY MORG 76-8-P October 25, 1978 RC 3/79 P1*	In testing return air from bleeder entry for compliance with methane concentration limit of 30 CFR §75.329, measurement should be made within bleeder split but as close as possible to point where air from bleeder split joins air from other split. Mine operator's failure to withdraw miners from area of mine where air from bleeder entry contained excessive concentration of methane until withdrawal was ordered by inspector, although management was aware that conditions constituted imminent danger and that withdrawal of miners was appropriate, constitutes gross negligence, and, together with other considerations, warrants assessment of $6,500 penalty for established violation of 30 CFR §75.329.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.329	ITMANN COAL COMPANY WEVA 80-9-R July 31, 1980 ALJ - Review Denied 7/80 p1986*	Provisions of 30 CFR 75.329 require that when ventilation system is used in abandoned area, system must continuously dilute, render harmless, and carry away methane and other explosive gases, and require that air from abandoned areas which enters another split of air shall not contain more than two percent methane, and operator violates standard when methane registering nine percent is found in area of abandoned mine because ventilation system failed to adequately dilute methane.
	SHAMROCK COAL COMPANY BARB 78-494-P June 5, 1979 ALJ - Final 6/79 p493*	MSHA failed to prove violation of 30 CFR §75.329 since it introduced no evidence that pillar recovery had been inititated and bleeder systems are not required under standard until process of pillar recovery is at least begun.
30 CFR 75.351	C C C POMPEY COAL COMPANY, INC. PIKE 79-125-P January 28, 1980 ALJ - Review Granted 1/80 p163	
30 CFR 75.400	ALABAMA BY-PRODUCTS CORP BARB 78-512 November 1, 1978 ALJ - Final Unbound	
	ALABAMA BY-PRODUCTS CORPORATION BARB 78-512 November 1, 1978 ALJ - Final Unbound	
	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	ARMCO STEEL CORPORATION HOPE 78-151-P November 9, 1978 ALJ - Final Unbound	
	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
	B B & W COAL COMPANY, INC. PIKE 78-36-P June 22, 1978 ALJ - Final Unbound	
	BETHLEHEM MINES CORPORATION PITT 78-412-P November 6, 1979 ALJ - Final 11/79 p1852*	Operator violated 30 CFR §75.400 despite its claim that friction between section crews resulted in refusal of day shift to clean up accumulation of loose coal because it is responsibiltiy of operator to prevent accumulations. Operator violated 30 CFR §75.400 despite its claim that accumulation of loose coal was caused by unusual rock conditions because evidence showed that operator allowed sizable accumulations to build up over period of time and not to be cleaned up from one shift to another.
	BIG TEN CORPORATION VA 80-30 August 15, 1980 ALJ - Final 8/80 p2266	Operator violates 30 CFR 75.400 when accumulations of coal dust are found in working area of mine and accumulation is so excessive that it could not be considered spillage which accumulated during normal mining cycle.
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	C C C POMPEY COAL COMPANY, INC. PIKE 79-125-P June 12, 1980 RC 6/80 p1195*	Judge's ruling, that Secretary failed to establish violation of 30 CFR 75.400 because inspector conceded that he did not know how long accumulation of combustible materials had been on scoop and thus could not establish that operator failed to clean it up within reasonable time, Old Ben Coal Company (1 MSHC 2241) held that standard is violated upon showing that accumulation exists regardless of cleanup effort.
		Operator violates 30 CFR 75.400 where oil and float coal dust are allowed to accumulate to depth of from one-eighth inch to one inch on and around electrical components of S and S Scoop, because Commission held in Old Ben Coal Company, 1 MSHC 2241 (1979) that 30 CFR 75.400 was designed to prevent accumulations rather than to require that accumulations be cleaned up within reasonable period of time.
		Violation of 30 CFR 75.400 is serious and associated with high degree of negligence where oil and float coal dust are allowed to accumulate to depth of from one-eighth inch to one inch on and around electrical components of S and S Scoop since accumulations are caked in form which show that they existed more than two days prior to writing of unwarrantable failure order under Section 104(d) of 1977 Act.
		It is improper to find that operator failed to demonstrate good faith effort to achieve compliance with unwarrantable failure order based on violation of 30 CFR 75.400, where oil and float coal dust accumulated to depth of from one-eighth inch to one inch on and around electrical components of S and S Scoop, solely because several days elapsed between time order was written and time it was terminated.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400		Evidence showing that operator violated 30 CFR 75.400 twice in 1976 and eight times in 1977 demonstrates very adverse trend in number of violations of that section and justifies increasing $300 penalty for 1978 violation of 30 CFR 75.400 to $400.
	C C C POMPEY COAL COMPANY, INC. PIKE 79-19-P September 3, 1980 ALJ - Final On Remand 9/80 p2512	
	C F & I STEEL CORPORATION DENV 78-417 June 27, 1979 ALJ - Final 6/79 p672*	Admitted knowledge on part of mine officials of accumulations of coal and coal dust of 2 1/2 to 3 hours prior to inspector's issuance of withdrawal order requires finding of violation of 30 CFR §75.400 as construed in Old Ben Coal Company, 8(IBMA 98 (1977)).
	C F & I STEEL CORPORATION DENV 78-44-P September 12, 1978 ALJ - Final Unbound	
	CANTERBURY COAL COMPANY PITT 78-127 April 21, 1978 ALJ - Review Granted Unbound	
	CEDAR COAL COMPANY WEVA 80-106 March 27, 1980 ALJ - Final 3/80 p746	
	CLINCHFIELD COAL COMPANY HORT 78-325-P January 14, 1980 ALJ - Final 1/80 p25*	Accumulations of float coal dust and loose coal inby tailpiece for distance of 500 feet and inby survey station for distance of 1, 100 ranging in depth from 1/4 inch to 20 inches in same vicinity as potential ignition sources constituted violation of 30 CFR §75.400.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	CLINCHFIELD COAL COMPANY NORT 78-344-P February 26, 1979 ALJ - Final Unbound*	Unless operator is aware of accumulation of coal or coal dust or, by exercise of due diligence, should have been aware of accumulation and has failed to clean it up or to start cleaning it up, he has not violated 30 CFR §75.400, which prohibits such accumulation.
	CONSOLIDATION COAL COMPANY MORG 78-310-P February 2, 1979 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-331 October 20, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-343-P August 24, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-344 October 27, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY PENN 79-72-R October 25, 1979 ALJ - Final 10/79 p1689*	Imminent danger withdrawal order issued because roof crack and fallen rock existed over large area of mine is vacated since crucial issue in finding of imminent danger is not size of area involved, but whether there is time for abatement of condition before reasonable chance of death or serious injury.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	CONSOLIDATION COAL COMPANY PENN 79-75 October 25, 1979 ALJ - Final 10/79 p1685*	Accumulation of coal four feet wide, 60 feet long, and seven inches deep that existed for up to two weeks in area where there were energized trailing cables and nip station constituted unwarrantable failure to comply with 30 CFR §75.400, since accumulation violated operator's clean-up plan and operator should have known of accumulation through preshift and onshift examination. Accumulation of coal in area where men were ready to go to work and that had not been blocked by posts constituted accumulation at "active working" under 30 CFR §75.400 and was caused by unwarrantable failure to comply with standard since operator should have known of accumulation through preshift and onshift examinations.
	CONSOLIDATION COAL COMPANY PENN 80-255-R September 22, 1980 ALJ - Final Unbound*	
	CONSOLIDATION COAL COMPANY WEVA 79-115-R November 28, 1980 ALJ - Final 11/80 p3426	
	CONSOLIDATION COAL COMPANY WEVA 79-354 March 19, 1980 ALJ - Final 3/80 p725	
	CONSOLIDATION COAL COMPANY WEVA 79-54-R October 12, 1979 ALJ - Final 10/79 p1601*	Coal dust accumulation two to 14 inches in depth extending 950 feet on floor, belt, equipment and power cables for period of seven days constituted unwarrantable failure of operator to comply with 30 CFR §75.400.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	CONSOLIDATION COAL COMPANY WEVA 80-110-R November 5, 1980 ALJ - Final 11/80 p3244	
	CONSOLIDATION COAL COMPANY WEVA 80-224-R September 19, 1980 ALJ - Final 9/80 p2647*	Operator violates 30 CFR 75.400 which prohibits accumulation of combustible materials, where credible testimony establishes that there were five separate piles of coal dust and loose coal, a distance of 2,000 feet along conveyor belts covered with coal dust and float coal dust which was black in color, and distance of 1,000 feet along conveyor belts covered with coal dust and float coal which was gray in color, because amount of spillage constitutes accumulation under cited standard. Violation of accumulation standard 30 CFR 75.400 justifies issuance of citation under Section 104(d)(1) of 1977 Act because of operator's unwarrantable failure to comply with mandatory standard where evidence establishes that coal accumulations were present for more than one working shift before citation was issued showing that operator knew or should have known of accumulation and failed to exercise reasonable care to abate condition and where testimony established that accumulations created potential hazard of fire and explosion.
	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	
	DKT COAL COMPANY KENT 79-349 November 20, 1980 ALJ - Final 10/80 p3336*	Operator violates requirements of 30 CFR 75.400 (accumulation of combustible materials) when loose coal extends for distance of 600 feet along side of conveyor belt, is six inches deep, and is 42 inches wide and float coal dust accumulation along conveyor is 600 feet long, 20 feet wide, and one-quarter-inch deep.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	DUQUESNE LIGHT COMPANY PITT 78-439-P May 10, 1979 ALJ - Final 5/79 p366 or 373	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 77-23 April 14, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-306-P September 27, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-77-P April 30, 1979 ALJ - Final 6/79 p775	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-8 May 23, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION PITT 77-58 May 11, 1978 ALJ - Final Unbound	
	EASTERN COAL CORPORATION PIKE 79-42-P November 2, 1979 ALJ - Final 11/79 p1837	
	EMPIRE ENERGY CORPORATION DENV 78-14-P September 22, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	FREEMAN UNITED COAL MINING COMPANY VINC 78-395-P March 28, 1980 ALJ - Decision on Remand 3/80 p748*	Proof of existence of accumulation of coal dust and loose coal in active workings of mine by itself warranted finding of violation of 30 CFR §75.400 without showing that operator was aware of accumulation and did remove it within reasonable time in accordance with Review Commission's decision in Old Ben Coal Company, 1 MSHC 2241 (1979).
	FREEMAN UNITED COAL MINING COMPANY VINC 78-49-P July 26, 1979 ALJ - Final 7/79 p936*	Evidence that accumulations had been piled along ribs for 3700 feet, coupled with fact that only one belt shoveler was working on accumulations when inspector walked belt, indicate that operator was not securing effective removal of accumulation and accordingly violated 30 CFR §75.400.
	GATEWAY COAL COMPANY PITT 78-368-P March 5, 1979 ALJ - Final 3/79 p61	
	GEORGE A. HARVEL DENV 77-40-P November 16, 1978 ALJ - Appealed - Dismissed Unbound *	
		Mine superintendent can be found liable for violation of 30 CFR 75.400 when an accumulation of coal dust is found in mine, and mine superintendent had inspected air courses immediately preceding issuance of citation, because his inspection should have made him aware of accumulation and its possible dangers.
	H & H MINING, INC. PIKE 78-68-P September 21, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	HARMAN MINING CORPORATION NORT 79-14-P August 30, 1979 ALJ - Final 8/79 p1264	
	HARMAR COAL COMPANY PITT 78-9 April 26, 1978 ALJ - Final Unbound	
	ITMANN COAL COMPANY HOPE 78-347 October 12, 1979 ALJ - Final 10/79 p1591*	Inspector correctly issued withdrawal order under § 104(d)(1) of 1977 Act for unwarrantable failure to comply with 30 CFR §75.400, since float coal dust up to nine inches thick accumulated along distance of 250 feet for period of at least one week and covered electric motors and cables.
	ITMANN COAL COMPANY WEVA 80-8-R August 11, 1980 ALJ - Final 8/80 p2193*	"Similar violation" is violation of any mandatory health or safety standard which is caused by unwarrantable failure of operator to comply; failure to establish intervening inspection between issuance of withdrawal order under Section 104(d)(1) of 1977 Act on March 14, 1979 and issuance of Section 104(d)(2) withdrawal order after inspection on September 5, 1979, which discloses no similar violations, does not break chain of orders; accordingly, Section 104(d)(2) withdrawal order is valid. Accumulation of puddles of hydraulic oil in car haul area of mine in violation of 30 CFR 75.400 is established where operator and Secretary agree that some puddles contained water covered with oil film and others were composed of hydraulic oil, it was necessary to disturb puddle surfaces to find water underneath, operator voluntarily paid $700 civil penalty for violating preshift examination regulation of 30 CFR 75.303 at time and place of occurrence, and inspector's estimate of several hundred gallons of oil in area is credible.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	JEWELL RIDGE COAL CORPORATION VA 80-77 November 21, 1980 Appeal Filed/Dismissed N/A	
	KANAWHA COAL COMPANY HOPE 78-189-P June 22, 1978 ALJ - Final Unbound	
	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
	LECKIE SMOKELESS COAL COMPANY HOPE 78-129-P June 22, 1978 ALJ - Final Unbound	
	LEECHBURG MINING COMPANY PITT 78-420-P June 27, 1979 ALJ - Final 6/79 p632*	Operator fails to clean up accumulations of combustible materials within reasonable time in violation of 30 CFR §75.400 when regular cleanup program contemplates removal of accumulations during next mining cycle and operator terminates mining activity in area without removing accumulations. Operator violates 30 CFR §75.400 when loose coal and oil-soaked coal dust accumulates on top of and sides of continuous miner in close proximity to source of ignition and remains for one and one-half shifts.
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	Operator violates 30 CFR 75.400 when coal dust is present along entries of three conveyor belts, on roof, ribs, floor, timbers, and belt structures and extends for distance of 400 feet and is nine inches in depth; fact that operator cleaned up coal once a week does not ameliorate fact that violation existed.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	LITTLE EGYPT COAL COMPANY VA 80-85 December 18, 1980 ALJ - Final 12/80 p3721*	Accumulation of dry, loose coal which is approximately four feet high, 20 feet wide, and 60 feet long outby survey station in entry intake airway, adjacent to belt entry, violates requirement of 30 CFR 75.400 that loose coal shall not be permitted to accumulate in active workings.
	MCCOY ELKHORN COAL CORPORATION KENT 80-243-R October 31, 1980 ALJ - Final 10/80 p3196*	Accumulation of combustible materials exists and violates standard, 30 CFR 75.400, when one-half inch of oil and grease remains on motor of cutting machine due to operator's failure to remove 40 percent of cited accumulation.
	NACCO MINING COMPANY VINC 78-78-P January 29, 1979 ALJ - Final Unbound	
	OLD BEN COAL COMPANY VINC 74-11 December 12, 1979 RC - Reverse & Reinstate 12/79 p1954*	Language of 30 CFR §75.400, legislative history of standard, and general purposes of 1969 Act support holding that standard is violated when accumulation of combustible materials exists, regardless of whether operator knew of accumulation or whether cleanup effort was begun within "reasonable time." Operator's failure to begin cleanup of accumulation of combustible materials until after 8 a.m. shift began, when accumulation was discovered between 4 a.m. and 7 a.m., constituted unwarrantable failure to comply with 30 CFR §75.400 and justified issuance of withdrawal order.
	OLD BEN COAL COMPANY VINC 75-180-P October 24, 1980 RC - Remanding 10/80 p2806*	Judge's vacation of notices alleging violations of 30 CFR 75.400, based on inspector's failure to measure depth or extent of accumulation of oil-saturated coal dust, was error because requirement of evidence of depth and extent of accumulation is too restrictive and does not further congressional intent.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400		For purposes of establishing violation of 30 CFR 75.400, accumulation exists where quantity of combustible materials is such that, in judgment of inspector, it likely could cause or propagate fire or explosion if ignition source were present.
	OLD BEN COAL COMPANY VINC 77-73-P February 2, 1979 ALJ - Final Unbound	
	OLGA COAL COMPANY HOPE 79-111 October 11, 1979 ALJ - Final 10/79 p1580*	Accumulation for three full mining shifts of combustible materials up to 20 inches in depth and extending along entire 600-foot length of active shuttle car haulage road and for 14 feet across width of entry constituted unwarrantable failure to comply with 30 CFR §75.400. Operator's "greater hazard" defense to violation of 30 CFR §75.400 to effect that foreman failed to clean up accumulation because he recognized existence of two safety hazards and attended to more serious hazards reduction of pressure on mine roof, is rejected since operator's approved cleanup program called for cleanup "as required" and mine personnel failed to effect plan.
	PEABODY COAL COMPANY BARB 78-653-P April 3, 1979 ALJ - Final 4/79 p28*	Cited area is "active working" within scope of 30 CFR §75.400 in light of operator's failure to seal and abandon area pursuant to its ventilation plan, despite contentions that work had been completed there, that regular duties such as extracting coal are no longer performed there, that operator did not plan to return there to work, that area had not been preshifted pursuant to 30 CFR §75.303, and that inspector may have contradicted his testimony characterizing area as "active working".

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400		Despite consistently occurring coal and coal dust accumulation violations, coal company's large size, and existence of cited accumulations over long period without clean up, mitigation of Secretary's recommended civil penalty for 30 CFR §75.400 violation is justified since conditions cited were neither grave nor posed a serious threat to miner safety and since they were cleaned up promptly once order was issued.
	PEABODY COAL COMPANY BARB 78-655-P August 29, 1979 ALJ - Final 8/79 p1121*	Mandatory standard 30 CFR §75.400 was violated where entries in belt examiner's book and shift reports made prior to inspection showed mine operator knew or should have known of accumulation of combustible material along belt. Presence and brownish color of float coal dust deposited atop spilled coal indicated that accumulation had been present for at least one week and that mine operator knew or should have known about it, thus violating 30 CFR §75.400.
	PEABODY COAL COMPANY LAKE 80-25 May 16, 1980 RC 5/80 p1035*	Operator's denial that coal spillage constituted "accumulation" within meaning of 30 CFR § 75.400 after administrative law judge's disapproval of settlement entitled operator to hearing pursuant to Section 105(d) of Federal Mine Safety and Health Act of 1977 even though operator admitted existence of spillage since depth of spillage was disputed issue of material fact that remained unresolved.
	PEABODY COAL COMPANY LAKE 80-77 July 11, 1980 ALJ - Final 7/80 p1795	
	PEABODY COAL COMPANY VINC 77-90 September 29, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	PEABODY COAL COMPANY VINC 77-91 May 5, 1978 ALJ - Review Granted Unbound	
	PIKEVILLE COAL COMPANY PIKE 78-86-P February 7, 1979 ALJ - Final Unbound	
	REPUBLIC STEEL CORPORATION MORG 78-304-P February 5, 1979 ALJ - Final Unbound	
	ROCHESTER & PITTSBURGH COAL COMPANY PITT 77-116 December 8, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SEWELL COAL COMPANY HOPE 77-310-P March 28, 1978 ALJ - Final Unbound	
	SEWELL COAL COMPANY HOPE 78-330-P June 29, 1979 ALJ - Final 6/79 p720*	Operator, in violation of 30 CFR §75.400, failed to clean up float coal dust accumulations in reasonable time after it should have known of them, in view of operator's unusual problems with float coal dust accumulations as a direct consequence of high velocity air currents moving through bin.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	SEWELL COAL COMPANY HOPE 78-44 March 30, 1978 ALJ - Final Unbound*	Operator's failure to present any witness who had examined accumulations of loose coal and coal dust under conveyor belt drive and crossbelt in order to rebut inspector's conclusions of long-term accumulations based on his observations and admission of assistant mine superintendent establishes operator's failure to clean up accumulations within reasonable time after discovery in violation of 30 CFR 75.400.
	SEWELL COAL COMPANY HOPE 78-679-P June 27, 1979 ALJ - Final 6/79 p691	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	STANSBURY COAL COMPANY DENV 77-80-P May 16, 1979 ALJ - Final 5/79 p404*	Operator's failure to have plan for regularly scheduled cleanup effectively minimizing float coal dust accumulation constitutes violation of 30 CFR §75.400.
	THE NORTH AMERICAN COAL CORPORATION VINC 78-312-P January 11, 1979 ALJ - Final Unbound	
	U S FUEL COMPANY DENV 78-414-P August 29, 1979 ALJ - Final 8/79 p1113	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.400	UNITED STATES STEEL CORPORATION WEVA 80-54-R April 8, 1980 ALJ - Final 4/80 p832*	Accumulation of float coal dust within cited area presents serious hazard to safety and health of miners in area thus consituting significant and substantial violation of 30 CFR §75.400 even though cited area is not within "high risk area".
	WINDSOR POWER HOUSE COAL COMPANY WEVA 79-199-R July 3, 1980 ALJ - Final 7/80 p1739*	Existence of piles of loose coal shortly after beginning of day shift when no coal had been mined since 4:00 P.M. on previous day constitutes unwarrantable failure to comply with standard at 30 CFR §75.400, since accumulations should have been discovered during preshift examination.
30 CFR 75.402	ALABAMA BY-PRODUCTS CORPORATION BARB 78-146-P September 21, 1978 ALJ - Final Unbound	
	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY BARB 78-474-P August 29, 1979 ALJ - Final 8/79 p1155	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.402	REPUBLIC STEEL CORPORATION PITT 78-315-P January 11, 1979 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 78-152-P March 9, 1979 RC - Petition Denied Appealed Unbound	
	SHAMROCK COAL COMPANY BARB 78-152-P January 30, 1979 ALJ - Appealed Unbound*	Unrecorded failure to properly rock dust roof of section did not constitute violation of 30 CFR §75.303 where inspector did not take dust samples, relied soley on visual observation and thereby failed to prove existence of violation or hazard.
	THE NORTH AMERICAN COAL CORPORATION VINC 78-312-P January 11, 1979 ALJ - Final Unbound	
30 CFR 75.402-1	CONSOLIDATION COAL COMPANY PITT 78-116 May 15, 1978 ALJ - Final Unbound	
30 CFR 75.403	BIG TEN CORPORATION VA 80-30 August 15, 1980 ALJ - Final 8/80 p2266	Provisions of 30 CFR 75.403 require that operator maintain incombustible content of rock dust of at least 65 percent at all times, and operator violates standard when inspector finds samples of rock dust less than 65 percent, even though operator was in process of distributing rock dust in accordance with regular plan at time of inspection, because operator should not be allowed to have inadequate amounts of rock dust in its facility for any period of time.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.403	LEECHBURG MINING COMPANY PITT 78-420-P June 27, 1979 ALJ - Final 6/79 p632*	Operator's criticisms of dust analysis report can only be considered as challenge to probative weight, not its admissibility as evidence in making prima facie case of violation of 30 CFR §75.403.
	LESLIE COAL MINING COMPANY KENT 79-51 September 19, 1980 ALJ - Final 9/80 p2654*	Operator violates 30 CFR 75.403, which requires that rock dust be applied so as to render areas in intake air to be at least 65 percent incombustible and areas in return air to be at least 80 percent incombustible, where sample showed only 61.6 percent incombustibility even though inspector could not prove that sample was taken in return entry, because sample showed that violation existed in any event.
	OLD BEN COAL COMPANY VINC 75-180-P November 17, 1980 ALJ - On Remand 11/80 p3302	
	OLD BEN COAL COMPANY VINC 75-180-P October 24, 1980 RC- Remanding 10/80 p2806*	Judge's vacation of notices alleging violations of 30 CFR 75.403, issued for failure to maintain sufficient incombustible content in rock dust, based on inspector's use of band sampling method contrary to directive contained in instructional manual, was error because such instructions are not officially promulgated and do not prescribe rules of law binding upon agency and failure to follow such directive is not sufficient basis to vacate notice of violation.
	PIKEVILLE COAL COMPANY PIKE 78-86-P February 7, 1979 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.403	PIKEVILLE COAL COMPANY PIKE 79-66 February 6, 1980 ALJ - Final 2/80 p307*	Imminent danger withdrawal order issued pursuant to §107(a) of 1977 Act because of accumulation of combustible material is vacated since there was only one potential source of ignition in area, inspector failed to issue order until two hours after discovery of accumulation, and dust samples were inadequate for analysis.
	PONTIKI COAL CORPORATION KENT 79-115-R February 11, 1980 ALJ - Final 2/80 p370*	Operator's knowledge that inadequate rock dust was applied in section of mine that produced large amount of methane gas while priority was given to installing supplemental roof support and maintaining high productivity in section establishes that §75.403 violation was unwarrantable.
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.500	BRAZTAH CORPORATION DENV 78-5-P June 22, 1978 ALJ - Final Unbound	
	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
30 CFR 75.501	BRAZTAH CORPORATION DENV 78-5-P June 22, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.501	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
30 CFR 75.501-2(a)(2)	CLINCHFIELD COAL COMPANY NORT 78-325-P January 14, 1980 ALJ - Final 1/80 p25*	Miner's use of hand-held drill in underground mine was impermissible and violated 30 CFR §75.501-2(a)(2) despite fact that 30 CFR §75.1106 permits use in underground mines of cutting torch or welding equipment, which are more dangerous than drill.
30 CFR 75.503	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	BRAZTAH CORPORATION DENV 78-5-P June 22, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-306-P September 27, 1978 ALJ - Final Unbound	
	JOHNSON BROTHERS COAL COMPANY, INC. PIKE 79-41-P April 15, 1980 ALJ - Final 4/80 p904*	Operator's knowing use of defective equipment is no defense to violation of 30 CFR 75.503 which requires that electric face equipment be maintained in permissible condition

Section of Act/Reg	Case Identification	Summary
30 CFR 75.503	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	Operator violates 30 CFR 75.503 when headlights are found to be inoperative on both ends of shuttle car; operator's argument that headlights should not be used since headlights of shuttle cars glare in eyes of continuous-mining machine operator is rejected because operator of shuttle car can turn off light on end next to continuous-mining machine when coal is loaded in shuttle car.
	PEABODY COAL COMPANY VINC 77-88 October 6, 1978 ALJ - Final Unbound*	All electric face equipment falls under protection of 30 CFR 75.503 regardless of its location in mine beause permissibility specifications in 30 CFR 18 specifically include machines "intended for use" in face area of mines; accordingly, operator's contention that permissibility violation under 30 CFR 75.503 has not occurred because there was no showing that relevant shuttle car was located inby last open crosscut during inspection, is rejected, since that interpretation would allow operator to avoid permissiblity violation by moving equipment out of face area immediately preceeding inspectors arrival. Civil penalty assessed for violation of 30 CFR 75.503 because opening between shuttle car junction box and junction box cover exceeded .009 of an inch at time of withdrawal order was issued, is not mitigated by "economic losses" stemming from vacated withdrawal order where operator does not present evidence using time of repair as commencement of loss of production period for purposes of determining "economic loss," since had inspector issued notice of violation instead of order, operator would have been required under its company policy to immediately take machine out of service and remedy impermissible condition of junction box cover.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.503	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	SOLAR FUEL COMPANY PENN 79-142 July 3, 1980 ALJ - Review Granted 7/80 p1732	
	SOUTHERN OHIO COAL COMPANY VINC 79-109-P October 19, 1979 ALJ - Final 10/79 p1642*	Violation of 30 CFR §75.503 was established where presence of worn or burned out spot on cable reel on shuttle car, which resulted in destruction of insulation, rendered car in nonpermissible condition.
30 CFR 75.504	BRAZTAH CORPORATION DENV 78-5-P June 22, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.506	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.507	ARMCO STEEL CORPORATION HOPE 78-151-P November 9, 1978 ALJ - Final Unbound	
	EASTOVER MINING COMPANY NORT 78-54-P November 8, 1978 ALJ - Final Unbound	
	EASTOVER MINING COMPANY VA 80-84 December 17, 1980 ALJ - Review Granted 12/80 p3673	
	LESLIE COAL MINING COMPANY KENT 79-51 September 19, 1980 ALJ - Final 9/80 p2654*	Secretary fails to prove violation of 30 CFR 75.507, which requires that power connection points outby last open crosscut shall be in intake air, where air that passed over power center had to pass across two other working faces before it would be exhausted into designated return entry and there is no definition for return air that is applicable to this situation.
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	SOUTHERN OHIO COAL COMPANY VINC 79-109-P October 19, 1979 ALJ - Final 10/79 p1642*	Positioning of brattice curtain, which is to serve as temporary stopping separating intake from return air, determines whether battery charger unit is located in intake or return air and, accordingly, whether 30 CFR §75.507 has been violated.

Section of Act/Reg	Case Identification	Summary
30 CFR 75:507		Issue of whether battery charger unit was energized at time of inspection goes to question of gravity of violation for assessing civil penalty but may not serve as absolute defense to violation of 30 CFR §75.507.
30 CFR 75.507-1	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
30 CFR 75.509	CONSOLIDATION COAL COMPANY WEVA 79-362 April 11, 1980 ALJ - Final 4/80 p866	
	PEABODY COAL COMPANY DENV 77-67-P November 13, 1978 ALJ - Final Unbound *	
		Necessity that power be on while electrician was "testing" malfunctioning circuit breaker bars finding of violation of requirement of 30 CFR 75.509 that electric equipment be de-energized before work is done on it, except when necessary for testing.
	UNITED STATES STEEL CORPORATION PITT 78-430-P November 3, 1980 ALJ - Final 11/80 p3220	
30 CFR 75.511	PEABODY COAL COMPANY VINC 78-37-P December 7, 1978 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION PENN 79-123 May 20, 1980 ALJ - Final 5/80 p1115	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.512	ALLIED CHEMICAL CORPORATION HOPE 78-722-P April 3, 1979 ALJ - Review Granted 4/79 p45	
	AMERICAN COAL COMPANY DENV 79-218-P August 19, 1979 ALJ - Final 8/79 p1057*	Failure to close openings in electrical boxes caused by knockouts constitutes violation of 30 CFR §75.512, which requires that electrical equipment be properly maintained to assure safe operating conditions.
	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-320-P August 17, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-306-P September 27, 1978 ALJ - Final Unbound	
	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.512	THE NORTH AMERICAN COAL CORPORATION VINC 78-312-P January 11, 1979 ALJ - Final Unbound	
	UNITED STATES STEEL CORPORATION HOPE 79-123 May 2, 1979 ALJ - Final 5/79 p360*	Inspection of portal bus brakes between shifts by working lever instead of regular examinations over a pit constitutes inadequate examination under 30 CFR §75.512 and imminent danger under §107 of 1977 Act; evidence establishes reasonable expectation of malfunction while people are in portal buses, resulting in death or serious injury before abatement can be accomplished.
	YOUNGSTOWN MINES CORPORATION HOPE 78-22 May 10, 1978 ALJ - Final Unbound	
30 CFR 75.512-2	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
30 CFR 75.513	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
30 CFR 75.514	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.514	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	THE NORTH AMERICAN COAL CORPORATION VINC 79-164-P November 16, 1979 ALJ - Final 11/79 p1895*	Citations for violations of 30 CFR §75.514 are vacated, since standard, which requires that all electrical connections be electrically efficient, does not apply to track haulage bonds and fish plates, as alleged in citations. "Electrical connection" referred to in 30 CFR §75.514 means entire configuration at joint including rails, bonds, fish plates, return cable and electrical cable, and electrical efficiency required by standard cannot be determined by looking at single elements of joint, such as one bond or one fish plate.
30 CFR 75.515	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.516	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 75.516-2	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634	
30 CFR 75.517	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-331 October 20, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.517	EASTERN ASSOCIATED COAL CORPORATION MORG 78-385-P December 4, 1978 ALJ - Review Denied Unbound	
	PIKEVILLE COAL COMPANY PIKE 77-91-P May 23, 1978 ALJ - Final Unbound	
	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
	WESTERN STATES COAL CORPORATION DENV 78-521-P March 1, 1979 ALJ - Final 3/79 p27*	Presence of 440-volt power cable for belt drive in crosscut entry resting on floor, exposing it to possibility of being run over or damaged by scoop, constitutes violation of 30 CFR § 75.517, since such cable must be protected at all times and potential for damage is not only to outer insulation but to inner wires and insulation as well.
30 CFR 75.518	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	EASTERN COAL CORPORATION PIKE 79-42-P November 2, 1979 ALJ - Final 11/79 p1837	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.518	SHAMROCK COAL COMPANY BARB 76-656-P June 18, 1978 ALJ - Review Granted Unbound	
	WEBSTER COUNTY COAL CORPORATION BARB 78-185-P June 7, 1978 ALJ - Final Unbound*	Penalty of $5000 is warranted for operator's violation of 30 CFR §75.518 concerning overload and short circuit protection on electric equipment when operator has previously violated cited standard 10 times, because lesser penalties for life-threatening violations "do not deter operator misconduct and are inconsistent with unambiguous intent of Congress to guarantee miners the highest possible level of safety."
30 CFR 75.520	OLD BEN COAL COMPANY LAKE 79-238 July 25, 1980 ALJ - Review Granted 7/80 p1929	
30 CFR 75.521	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
30 CFR 75.523	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.523	EASTOVER MINING COMPANY NORT 78-54-P November 8, 1978 ALJ - Final Unbound	
	SKYVIEW MINING, INC. PIKE 78-365-P April 17, 1979 ALJ - Final 4/79 p230	
	UNITED STATES STEEL CORPORATION HOPE 79-121 May 2, 1979 ALJ - Final 5/79 p353	
	UNITED STATES STEEL CORPORATION PENN 79-31 June 10, 1980 ALJ - Final 6/80 p1376*	Mine owner violates provisions of 30 CFR §75.523, which requires that electric face equipment be provided with devices that will permit equipment to be de-energized quickly in event of emergency, when evidence shows that panic bars on owner's ram cars were not maintained properly because operator had to reach for bar from his operating position to activate device.
30 CFR 75.523-1	DKT COAL COMPANY KENT 79-349 November 20, 1980 ALJ - Final 10/80 p3336*	Operator violates requirements of 30 CFR 75.523-1 that self-propelled electric face equipment shall be provided with device that will quickly deenergize the tramming motors of the equipment in event of emergency, when emergency deenergizing device on canopy-equipped roof-bolting machine, which is self-propelled face equipment within meaning of standard, is not in order.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.523-1	HARMAN MINING CORPORATION NORT 79-63-P February 25, 1980 ALJ - Final 2/80 p532*	De-energization device rendered inoperable by wooden wedge driven behind device violated 30 CFR §75.523-1 requirement that self-propelled electric face equipment be equipped with device to quickly de-energize tramming motors in event of emergency, where coal drill was equipped with self-centering hydraulic levers that could not de-energize electrically-driven pump and thus failed to completely de-energize tramming motors.
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 75.523-1(a)	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.523-1(a)(2)	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.523-1(b)	UNITED STATES STEEL CORPORATION PENN 79-31 June 10, 1980 ALJ - Final 6/80 p1376*	
30 CFR 75.601	EASTERN ASSOCIATED COAL CORPORATION PITT 77-58 May 11, 1978 ALJ - Final Unbound	
	EASTERN COAL CORPORATION PIKE 79-42-P November 2, 1979 ALJ - Final 11/79 p1837	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.601	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 75.601-3	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	P M & B COAL COMPANY, INC. NORT 78-13-P June 13, 1978 ALJ - Final Unbound*	
30 CFR 75.603	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	C C C POMPEY COAL COMPANY, INC. PIKE 79-125-P January 28, 1980 ALJ - Review Granted 1/80 p163	
	CO-OP MINING COMPANY DENV 75-207 April 21, 1980 RC 4/80 p784*	Administrative law judge's conclusion that inadequate temporary splice of trailing cable, which was laying on wet floor and could cause shock or fire, constituted violation of 30 CFR §75.603 is affirmed.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.603	EMPIRE ENERGY CORPORATION DENV 78-442-P December 8, 1978 ALJ - Final Unbound*	Spliced conductor wires in trailing cable to water pump that have been tied in square knots or twisted together are not made in workmanlike manner and mechanically joined as required by 30 CFR 75.603; intent of standard and 1978 MSHA Inspector's Manual for underground coal mines is to insure that all such temporary splices are uniformly made by means of mechanical devices such as rings and connectors. Secretary's argument that violation of 30 CFR 75.603 was of utmost seriousness since two miners carrying energized water pump could be electrocuted if splice in trailing cable to water pump opened and if conductors were to pull apart and circuit breaker failed to trip, is rejected since evidence establishes that pump was permissible, square-knotted splice was secure and well insulated water, there was no real danger of cable or splice being run over since no equipment was operating at face area, ground fault system was operational, circuit breaker system had been previously checked and there was no evidence that it was not operational, and there is no credible evidence that cable was otherwise damaged.
	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.603	SUNSHINE COLLERIES, INC NORT 78-56-P June 23, 1978 ALJ - Final Unbound	
30 CFR 75.604	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	
	C C C POMPEY COAL COMPANY, INC. PIKE 79-125-P January 28, 1980 ALJ - Review Granted 1/80 p163	
	FREEMAN UNITED COAL MINING COMPANY VINC 78-394-P May 31, 1979 ALJ - Final 5/79 p454*	Operator demonstrates ordinary negligence where preshift examiner or section foreman should have observed trailing cable splice that was split open, in violation of 30 CFR §75.604, and should have taken corrective action, since inspector's withdrawal order citing defective splice was issued at 9:20 a.m., relatively early in shift, and either preshift or onshift examination should have revealed improper splice, and actual or constructive knowledge by such personnel is imputed to operator.
	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	
	SHAMROCK COAL COMPANY BARB 79-272-P December 4, 1979 ALJ - Final 12/79 p1973*	Inspector's reliance on MSHA manual and interpretative memoranda in issuing citation for violation of 30 CFR §75.604 was improper since, in interpreting standard, such manuals and memoranda do not have status of mandatory Secretarial regulations.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.604		Secretary of Labor's failure to conduct tests and studies to establish that company's use of square knots as cable splices rendered cables mechanically and electrically inefficient and fact that MSHA has approved use of square knots as cable splices warrant dismissal of citation for violation of 30 CFR §75.604.
30 CFR 75.604 (b)	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
30 CFR 75.604 (c)	FREEMAN UNITED COAL MINING COMPANY VINC 78-394-P May 31, 1979 ALJ - Final 5/79 p454*	Good bonding of permanent splices in trailing cables does not exist, in violation of 30 CFR §75.604(c), where outer cable jacket and outer splice jacket were not fused together with glue-type substance because outer jacket was misapplied and attempt to remedy defect was made with plastic electrical tape.
	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
30 CFR 75.605	ISLAND CREEK COAL COMPANY KENT 79-50 August 14, 1980 ALJ - Final 8/80 p2259*	Inspector's inability to testify in support of citation alleging violation of 30 CFR 75.1722, because of his involvement in serious auto accident, and Secretary's conclusion that language of citation alleging violation of 30 CFR 75.605 does not properly show violation of that section, constitute adequate reasons for vacating citations.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.606	B B & W COAL COMPANY, INC. PIKE 78-36-P June 22, 1978 ALJ - Final Unbound	
30 CFR 75.701	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.701-3	EASTERN COAL CORPORATION PIKE 79-42-P November 2, 1979 ALJ - Final 11/79 p1837	
30 CFR 75.703	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	BRAZTAH CORPORATION DENV 78-5-P June 22, 1978 ALJ - Final Unbound	
	KERMIT COAL COMPANY, INC. HOPE 77-293-P August 3, 1978 ALJ - Final Unbound	
	McCOY ELKHORN COAL CORPORATION KENT 80-122-R May 22, 1980 ALJ - Final 5/80 p1143*	Dismissal of withdrawal order issued pursuant to §107(a) of Federal Mine Safety and Health Act of 1977 is justified when inspector issued order for alleged violation of 30 CFR §75.703 for defectively grounded cable on shuttle car, because at time order was issued, there was no imminent danger because car was de-energized.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.800	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
30 CFR 75.807	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
	KEYSTONE COAL MINING CORPORATION PENN 79-24 December 28, 1979 ALJ - Final 12/79 p2154*	Citation for violation of requirement in 30 CFR §75.807 that high-voltage cables that miners pass under be guarded is vacated since storage area to which miners were going had been moved 200 feet inby unguarded cable before issuance of citation and Secretary of Labor did not present evidence as to what kind of guarding is required by standard.
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	Operator violates 30 CFR 75.807 (high-voltage cables shall be guarded) when cable, transmitting power to transformer, was looped beside transformer and found lying on mine floor where miner could have stepped over it; fact that tranformer filled up most of entry when cable was attached and that operator's witness was not afraid to step over cable and handle it with gloves failure to guard cable or place it in less hazardous position.
30 CFR 75.900	PETER WHITE COAL MINING CORPORATION HOPE 78-23 April 24, 1979 ALJ - Final 4/79 p255	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.900	SHADE COAL COMPANY WILK 78-301-P August 25, 1978 ALJ - Final Unbound	
30 CFR 75.901	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SHADE COAL COMPANY WILK 78-301-P August 25, 1978 ALJ - Final Unbound	
30 CFR 75.1002	CONSOLIDATION COAL COMPANY PITT 79-161 April 12, 1979 ALJ - Final 4/79 p226*	Where a transformer is present in a battery charger, the citation of a battery charger under 30 CFR §75.1002 includes a transformer. Unwarrantable failure under §104 (d)(2) of Federal Mine Safety and Health Act of 1977 exists where longwall mining has been going on for 10 days before issuance of §104(d)(2) withdrawal order, evidence shows without dispute that for these 10 days a battery charger with transformer was in prohibited location in violation of 30 CFR §75.1002, and operator, through its management personnel, knew of situation during entire period.
	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
30 CFR 75.1002 -1	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1002 -1(a)	KAISER STEEL CORPORATION DENV 78-367-P September 1, 1978 ALJ - Final Unbound	
	KAISER STEEL CORPORATION DENV 78-39-P July 19, 1978 ALJ - Final Unbound *	Dismissal of citation for violation of 30 CFR 75.1002-1(a) for using nonpermissable telephones is justified when operator establishes that permissable telephones were unavailable for use in mines on day notices of violation were issued, and operator had made reasonable effort to obtain telephones which would comply with Mine Safety and Health Administration's new standards.
30 CFR 75.1003	SOUTHERN OHIO COAL COMPANY VINC 79-109-P October 19, 1979 ALJ - Final 10/79 p1642*	Fact that Secretary did not establish that workers regularly passed under wire was not controlling as to whether violation of 30 CFR §75.1003 occurred since standard also requires that wires be guarded where men are required to work. Fact that Secretary of Labor did not establish that trolley wires were energized at time citation was issued is not controlling as to whether violation of 30 CFR §75.1003 occurred but goes to question of gravity of violation for assessing civil penalty. Although inspector did not actually observe workers passing under unguarded trolley wires, his unrebutted conclusion that men passed under wires based on impossibility of unloading supplies in any other manner established violation of 30 CFR §75.1003.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1003 (a)	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
30 CFR 75.1100	B B & W COAL COMPANY, INC. 77-48-P October 25, 1979 RC 10/79 p1479*	Civil penalty for violation of general firefighting equipment requirement under 30 CFR §75.1100 was dismissed since cited condition was violation of 30 CFR §75.1100-2(e)(2), which is detailed requirement under 30 CFR §75.1100, and there was no showing on record that operator was aware of specific violation charged against it.
	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
30 CFR 75.1100 -2	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1100 -2	MOUNTAIN ENERGY, INC. SE 80-5 December 9, 1980 ALJ - Final 12/80 p3558	
30 CFR 75.1100 -2(b)	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	F M V COAL CORPORATION HOPE 77-128 February 26, 1980 ALJ - Final 2/80 p575*	Issuance of withdrawal order pursuant to section 104(c)(1) of 1969 Act is justified when operator fails to comply with requirements of 30 CFR §75.1100-2(b) by failing to provide sufficient outlet valves for waterlines, and miners who are idled by withdrawal order are entitled to receive full compensation for lost time.
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 75.1100 -2(c)	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
30 CFR 75.1100 -2(e)	ISLAND CREEK COAL COMPANY KENT 79-50 August 14, 1980 ALJ - Final 8/80 p2259*	Fire extinguishers 80 feet or more from electrical installation are excessively distant from installation and do not qualify as fire extinguishers "at" permanent electrical installation within meaning of 30 CFR 75.1100-2(e); accordingly, where all fire extinguishers other than single 5-pound extinguisher are 80 to over 200 feet from belt drive power center, operator is in violation of 30 CFR 75.1100-2(e).

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1100 -2(e)	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.1100 -2(e)(2)	B B & W COAL COMPANY, INC. 77-48-P October 25, 1979 RC 10/79 p1479*	Civil penalty for violation of general firefighting equipment requirement under 30 CFR §75.1100 was dismissed since cited condition was violation of 30 CFR §75.1100-2(e)(2), which is detailed requirement under 30 CFR §75.1100, and there was no showing on record that operator was aware of specific violation charged against it.
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.1100 -2(g)	ISLAND CREEK COAL COMPANY WEVA 79-405 June 27, 1980 ALJ - Final Unbound*	30 CFR §75.1100-2(g), which requires that portable fire extinguisher or 240 pounds of rock dust be provided at locations where welding, cutting, or soldering with arc or flame is being done, does not aply to situation where miner is using handheld propane burner unit to heat and bond new insulation to electrical cable because standard, by its own precise language, specifically limits its application to situation where open flame is used for purposes of welding, cutting, or soldering.
30 CFR 75.1100 -2(i)	CO-OP MINING CO DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
	CO-OP MINING COMPANY DENV 77-87-P October 10, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1100 -3	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SEWELL COAL COMPANY HOPE 78-330-P June 29, 1979 ALJ - Final 6/79 p720*	Operator violates 30 CFR §75. 1100-3, the general fire firefighting equipment provision, when it runs belt drive units equipped with inoperable water sprinkler system, even though 30 CFR §75.1101-7 through §75. 1101-11 set forth requirements specifically for water sprinkler systems.
30 CFR 75.1101	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
30 CFR 75.1101 -1	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634	
30 CFR 75.1101 -3	BIG TEN CORPORATION VA 80-30 August 15, 1980 ALJ - Final 8/80 p2266	Operator must have operable water deluge system for underground belt drive, as required by 30 CFR 75. 1101-3, but citation for violation of standard must be dismissed when there is conflicting evidence as to whether cited water pipe was severed or just cracked, and there was convincing evidence that system, despite crack, was operating sufficiently.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1101 -7	SEWELL COAL COMPANY HOPE 78-330-P June 29, 1979 ALJ - Final 6/79 p720*	Operator violates 30 CFR §75. 1100-3, the general fire firefighting equipment provision, when it runs belt drive units equipped with inoperable water sprinkler system, even though 30 CFR §75.1101-7 through §75. 1101-11 set forth requirements specifically for water sprinkler systems.
30 CFR 75.1101 -11	SEWELL COAL COMPANY HOPE 78-330-P June 29, 1979 ALJ - Final 6/79 p720*	Operator violates 30 CFR §75. 1100-3, the general fire firefighting equipment provision, when it runs belt drive units equipped with inoperable water sprinkler system, even though 30 CFR §75.1101-7 through §75. 1101-11 set forth requirements specifically for water sprinkler systems.
30 CFR 75.1101 -23	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
30 CFR 75.1102	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634	
30 CFR 75.1102 (a)	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 75.1103 .1	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
30 CFR 75.1103	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1103	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 75.1103 -4	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	
30 CFR 75.1103 -4(a)	ITMANN COAL COMPANY HOPE 79-307 February 26, 1980 ALJ - Final 2/80 p591*	Inspector reasonably refused to extend time allowed for abatement of violation of 30 CFR §75.1103-4(a) requirement that automatic fire sensor and warning device system be equipped with sensor within each belt flight because operator did not make reasonable effort to place necessary sensor as evidenced by failure to adequately supervise employee's abatement efforts, even though necessary equipment was available and time allotted for abatement was ample.
30 CFR 75.1103 -8(b)	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
30 CFR 75.1105	BRAZTAH CORPORATION DENV 78-5-P June 22, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1105	RUSHTON MINING COMPANY PITT 75-399-P July 9, 1979 BC 7/79 p794*	In determining whether pump at issue was "permanent pump" within meaning of 30 CFR §75.1105, judge correctly looked to purpose of standard and characteristics of pump.
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 75.1106 -3(2)	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
30 CFR 75.1107	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 75.1200	SHADE COAL COMPANY WILK 78-301-P August 25, 1978 ALJ - Final Unbound	
30 CFR 75.1204	TRIPLE S COAL COMPANY PIKE 79-7-P January 28, 1980 ALJ - Final 1/80 p100*	Testimony of MSHA's witnesses who only possessed "big list" of abandoned mines prepared by other personnel cannot be used to prove failure of operator to submit final map of abandoned mine in violation of 30 CFR §75.1204, where operator introduces credible witness who testifies that final map was timely submitted.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1303	PEABODY COAL COMPANY VINC 78-52-P June 29, 1978 ALJ - Final Unbound	
30 CFR 75.1306	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-77-P April 30, 1979 ALJ - Final 6/79 p775	
30 CFR 75.1400	PEABODY COAL COMPANY BARB 78-606-P March 26, 1979 ALJ - Final 3/79 p143*	Failure to provide qualified hoisting engineer at or near mine's hoist facility while persons are underground does not constitute violation of 30 CFR §75.1400 where mine personnel were not transported underground by means of the hoisting device, since nothing in standard requires mine operator to use hoisting device to transport men or supplies underground or to install such a hoist, or have it available for transportation of men to surface in event of emergencies, and standard refers to circumstances in which persons are transported into or out of a mine, rather than location at which such transportation is had.
30 CFR 75.1401 -1	CONSOLIDATION COAL COMPANY PENN 80-165-R August 6, 1980 ALJ - Final 8/80 p2144*	Issuance of imminent danger withdrawal order pursuant to section 107(a) of Federal Mine Safety and Health Act of 1977, when inspector finds that spacing of clamps on hoist rope are not in accordance with standards described in 30 CFR 75.1401-1 and also finds bulges between clamps, is justified when evidence established that misspacing could be due to indequate torque on clamps and could cause rope to continue to slip so that rope could pull off thimble, causing cage to fall down shaft, killing or injuring miners in cage.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1401 -1		Primary factor in determining validity of imminent danger withdrawal order issued when inspector finds that spacing of clamps on hoist rope is not in accordance with standards described in 30 CFR 75.1401-1 is cause behind these shifts in position between time rope was originally installed and time it was inspected, and relative strength of rope under different, unshifting clamp spaces is not material to validity of order.
30 CFR 75.1403	CONSOLIDATION COAL COMPANY WEVA 79-120-R July 31, 1980 ALJ - Final 7/80 p2021*	Mine Safety and Health Administration's clerical mistake in describing safeguard notice on which it bases operator's violation of 30 CFR 75.1403 did not deprive operator of adequate notice of violation if operator can present no evidence of prejudice to preparation of its case, and operator's search of its records would have notified it of discrepancy and would have prompted it to request clarification. Safeguard notice which refers only to keeping tracks free from excess water cannot be construed as encompassing both mud and excess water because safeguard notice must be strictly construed; operator must comply with requirements of de facto mandatory safety standard promulgated without protection or opportunity to submit comments, and therefore notice should be written precisely to avoid question as to performance required of operator. Withdrawal order issued for failure to abate violation of safeguard notice which prohibits accumulation of excess water along tracks must be vacated when evidence established that, on day order was issued, there was no water over rails, and although there was mud along rail which could be deposited onto rails, this was not actual violation because safeguard notice applied only to accumulation of water.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1403	CONSOLIDATION COAL COMPANY WEVA 79-171-R October 19, 1979 ALJ - Final 10/79 p1638*	Withdrawal order issued under §104(b) of 1977 Act for failure to correct improper gauge between rails of main haulage track is vacated since, in view of substantial work done to abate condition and fact that work was continuing, period of time for abatement should have been further extended.
	EASTERN ASSOCIATED COAL CORPORATION MORG 75-393 October 23, 1979 RC 10/79 p1473	Tagging jitney with inoperable parking brake as out of service was not adequate abatement of violation of 30 CFR §75.1403; operator should have abated violation by repairing jitney or rendering it inoperable.
	JIM WALTER RESOURCES, INC. BARB 78-652-P September 4, 1979 ALJ - Final 9/79 p1317*	Although 30 CFR §75.1403 is underground coal mine standard it clearly applies to some surface conditions of underground mine and, specifically, to condition of installing derails or stop blocks at tracks near top of mine shaft. It is not sufficient that purpose of safeguard notice issued pursuant to 30 CFR §75.1403 was violated if that purpose was not expressly stated in notice and notice lacks sufficient specificity to cover hazardous condition.
	JONES & LAUGHLIN STEEL CORPORATION PITT 77-32-P March 24, 1978 ALJ - Final Unbound	
	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1403 -5(j)	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 75.1403 -6(b)(3)	SEWELL COAL COMPANY WEVA 79-293 January 24, 1980 ALJ - Final 1/80 p96	
30 CFR 75.1403 -10	CLINCHFIELD COAL COMPANY NORT 78-325-P January 14, 1980 ALJ - Final 1/80 p25*	Fact that deceased locomotive operator might have avoided collision but had crouched down to avoid cold air and failed to see stalled cars ahead is no defense to violation of requirement of 30 CFR §75.1403-10 that reflectors be put on cars because it is management's obligation to provide shields and goggles to allow operator to withstand cold air and safely operate locomotive. Civil penalty of $9,000 for violation of requirement of 30 CFR §75.1403-10 that warning reflectors be placed on railroad cars is warranted because stalled locomotive that caused fatal accident had just come from repair shop and was not functioning properly but was still utilized, operator of stalled locomotive did not report to dispatcher that train was stopped, and personnel were not trained in safety procedures.
30 CFR 75.1404	ALLIED CHEMICAL CORPORATION HOPE 78-722-P April 3, 1979 ALJ - Review Granted 4/79 p45	
	SEWELL COAL COMPANY HOPE 78-529-P October 6, 1978 ALJ - Review Denied Unbound*	Operator violates provision of 30 CFR §75.1404-1 when its locomotive does not have adequate braking system, and there is evidence that locomotive is not being operated within limits of its design capabilities and at speed consistent with condition of haulage road.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1404 -1	ALLIED CHEMICAL CORPORATION HOPE 78-722-P December 19, 1980 RC 12/80 p3478*	Standard at 30 CFR 75.1404-1 requires that dual braking system be both present and operable; accordingly, violation of standard can be established by proof that locomotive is not equipped with operable dual braking system or proof that locomotive is operated beyond its design capabilities or at speeds inconsistent with haulage road conditions. Hearing judge should have made finding as to whether truck emergency brake is part of pneumatic portion of dual braking system and as to reason for failure of pneumatic brake to stop train after electricity was interrupted where violation of 30 CFR 75.1401-1 is charged; accordingly, case is remanded.
	CONSOLIDATION COAL COMPANY PENN 80-224-R November 6, 1980 ALJ - Final 11/80 p3253	
30 CFR 75.1405	CONSOLIDATION COAL COMPANY MORG 78-337 December 14, 1978 ALJ - Final Unbound	
	PITTSBURGH COAL COMPANY PITT 76-123-P October 9, 1979 RC 10/79 p1468*	Inoperable automatic uncoupling device on one side of mine cars constitutes violation of 30 CFR §75.1405 even though operator maintained operable uncoupling devices on other side of cars; purpose of standard, which is to prevent workers from being crushed between cars while manually uncoupling cars, is best effectuated by requiring that all uncoupling devices be maintained in operable condition.
	SOUTHERN OHIO COAL COMPANY VINC 79-109-P October 19, 1979 ALJ - Final 10/79 p1642*	Violation of 30 CFR §75.1405 was established where uncoupling devices on rock haulage cars were broken and cars could not be coupled without someone going between ends of cars.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1405		Company's defense that 30 CFR §75.1405 was inapplicable to surface work area of underground mine was rejected because track haulage system is integral part of underground mine, rock haulage cars were used underground, and surface storage area where cars were located when citation was issued was part of underground mine.
30 CFR 75.1405 -1	SOUTHERN OHIO COAL COMPANY VINC 79-109-P October 19, 1979 ALJ - Final 10/79 p1642*	Company's defense that haulage cars were used sporadically rather than regularly and therefore 30 CFR §75.1405-1 did not apply was rejected because haulage cars were used in loading out materials resulting from "shooting out" of overcasts, which is regular activity in coal mining.
30 CFR 75.1605 (a)	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	
30 CFR 75.1605 (k)	B B & W COAL COMPANY, INC. PIKE 78-36-P June 22, 1978 ALJ - Final Unbound LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	
30 CFR 75.1700	PEABODY COAL COMPANY VINC 79-52-P June 1, 1979 ALJ - Final 6/79 p473*	Delay of two business days in issuance of citations charging violations of 30 CFR §75.1700 is not unreasonable where inspector was uncertain whether violation occurred and what corrective action should be recommended and consulted with his superiors because of unusual nature of matter, and there was no showing that delay was prejudicial to operator.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1700		Operator is required to locate oil and gas wells and establish and maintain appropriate barriers of coal or other materials whenever oil and gas wells are located under 30 CFR §75.1700, whether or not wells are in existence when coal is mined.
		Operator that is unable to prevent drilling of oil wells by another company and that had already mined coal which would have constituted 300-foot coal barrier around wells cannot be held liable for violation of 30 CFR §75.1700 for failure to establish and maintain such barrier, but can be held for violation because of its failure to notify Secretary that wells had been located and can be held liable for failure to maintain substitute barrier if that should thereafter be determined to be necessary.
		MSHA's action requiring construction of additional barrier around oil wells to comply with 30 CFR §75.1700 is arbitrary and capricious where only evidence in support of additional barrier is testimony of inspector who was not expert in this field, inspector's superiors (who lacked any first-hand knowledge of mine) made determination that barrier was necessary, mine subsidence is normal condition, and there is little or no danger of accidental rupturing of an oil well and sudden release of gas under pressure.
30 CFR 75.1701	JOHNSON BROTHERS COAL COMPANY, INC. PIKE 79-41-P April 15, 1980 ALJ - Final 4/80 p904*	Operator violated requirements of 30 CFR §75.1701 as 20-foot boreholes were not being drilled in advance of working face at time when mine was within 100 to 150 feet of adjacent mine and there was possibility that miners would cut into abondoned mine and be drowned by water or overcome to noxious gases which have accumulated in abandoned mine.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1702	FRANK J. BOUGH VINC 79-247-P June 5, 1980 ALJ - Final 6/80 p1331*	Miner violates provision of 30 CFR §75.1702 when he is found smoking cigarette in underground mine, and miner's employer also violates regulation because it is employer's duty to insure that no person entering underground area of mine carries smoking materials.
30 CFR 75.1704	AMERICAN COAL COMPANY DENV 79-218-P August 19, 1979 ALJ - Final 8/79 p1057*	Since operator and inspector presented contradictory evidence as to whether intake escapeway was in fact marked, charge in violation of 30 CFR §75.1704 was not proved and citation was vacated.
	C C C POMPEY COAL COMPANY, INC. PIKE 79-125-P January 28, 1980 ALJ - Review Granted 1/80 p163	
	CONSOLIDATION COAL COMPANY PENN 79-105 July 11, 1980 ALJ - Final 7/80 p1809*	Operator violates 30 CFR §75.1704, which requires that at least two separate travelable passageways be maintained in safe condition, when roof falls occur in one escapeway which makes passage difficult even though roof falls occurred between time of last regular weekly inspection and date of citation, because regulation imposes absolute duty upon operator with respect to condition of passageways and does not distinguish between conditions which occur due to unpredictable circumstances and those caused by operator's lack of due dilligence.
	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	
	REPUBLIC STEEL CORPORATION MORG 78-304-P February 5, 1979 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1704	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SEWELL COAL COMPANY HOPE 78-744-P February 12, 1980 ALJ - Review Granted 2/80 p392	
30 CFR 75.1704 -2(d)	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
30 CFR 75.1707	CONSOLIDATION COAL COMPANY PITT 79-168 June 15, 1979 ALJ - Final 6/79 p538	
	REPUBLIC STEEL CORPORATION PITT 78-459 November 16, 1979 ALJ - Final 11/79 p1889*	Citation for violation of 30 CFR §75.1707, which requires that intake escapeway be separated from belt and trolley haulage entries for entire length of such entries to beginning of working section, is vacated, since working section should be designated as being at belt tailpiece, rather than where coal is loaded on shuttle car, as Secretary of Labor contended.
30 CFR 75.1710	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	C C C POMPEY COAL COMPANY, INC. PIKE 79-125-P January 28, 1980 ALJ - Review Granted 1/80 p163	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1710	DUQUESNE LIGHT COMPANY PITT 78-439-P May 10, 1979 ALJ - Final 5/79 p366 or 373	
	HARMAN MINING CORPORATION MORT 79-14-P August 30, 1979 ALJ - Final 8/79 p1264	
	JOHNSON BROTHERS COAL COMPANY, INC. PIKE 79-41-P April 15, 1980 ALJ - Final 4/80 p904*	When no technology exists to provide usable canopies for electric face equipment which operator is using, impossibility of obtaining equipment can be used as affirmative defense against claim of violation of 30 CFR §75.1710 but nominal penalty will be assessed if operator did not try to obtain canopies until after citations were issued.
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	UNITED STATES STEEL CORPORATION HOPE 78-7-P May 19, 1978 ALJ - Final Unbound*	Acme roof bolting machine, which is used as carrier to transport device actually being used to roof bolt face, qualifies as self-propelled electric face equipment and is subject to requirements of 30 CFR 75.1710 that it be provided with canopy or cab.
	WATSON & CASSADY COAL COMPANY KENT 79-110 August 7, 1980 ALJ - Final 8/80 p2170	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1710 -1	D K T COAL COMPANY KENT 79-348 August 14, 1980 ALJ - Final 8/80 p2251*	Operator, by beginning to operate in high seam of coal without installation of canopies on scoop and tractor in violation of 30 CFR 75.1710-1, demonstrates high degree of negligence, because operator was aware that canopies were required at new location and operator knew he could not get canopies at that time even though he put them on order.
	LAMBERT COAL COMPANY NORT 79-26-P July 31, 1979 ALJ - Final 7/79 p982	
30 CFR 75.1710 -1(a)	PENN ALLEGH COAL COMPANY, INC. PITT 78-97-P April 7, 1978 ALJ - Review Granted Unbound	
	REPUBLIC STEEL CORPORATION PITT 78-156-P May 15, 1979 ALJ - Review Granted Unbound	
	SEWELL COAL COMPANY WEVA 79-31 September 20, 1979 ALJ - Review Granted 9/79 p1379	
30 CFR 75.1710 -1(a)(4)	CLINCHFIELD COAL COMPANY NORT 78-344-P February 26, 1979 ALJ - Final Unbound*	Difficulty of taking old machine and installing equipment on it to meet new safety standards and still accomodate operator of machine is defense to violation of requirement of 30 CFR §75.1710-1 (a)(4) that electric face equipment have canopies or cabs.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1710 -1(a)(4)	RANGER FUEL CORPORATION WEVA 79-378-R March 10, 1980 ALJ - Final 3/80 p674*	Employees' use of continuous mining machine with remote control console without canopy in violation of 30 CFR §75.1710-1(a)(4) after several citations for such violations had been issued and foreman had issued warnings but taken no disciplinary action warranted issuance of withdrawal order pursuant to §104(c)(2) of Federal Mine Safety and health Act of 1977 based on mine operator's unwarrantable failure to comply with Act.
	SOUTHERN OHIO COAL COMPANY VINC 79-109-P October 19, 1979 ALJ - Final 10/79 p1642*	Where inspector failed to take detailed notes or otherwise establish that average mining height where roof bolting machine was operating was more than 42 inches and thus required use of canopy, citation for violation of 30 CFR §75.1710-1(a)(4) was vacated.
30 CFR 75.1711	TRIPLE S COAL COMPANY PIKE 79-22-P January 28, 1980 ALJ - Final 1/80 p121*	Operator violated requirement of 30 CFR §75.1711 that abandoned mines be sealed because dirt had been pushed into entries of operator's abandoned mine for distance of only five or ten feet and there was space above dirt through which persons could enter mine. Operator violated 30 CFR §75. 1711 when it failed to properly seal abandoned mine even though co-partner of operator only examined mine as agent of mine owner because co-partner notified MSHA that he would enter mine and that operator intended to produce coal.
30 CFR 75.1712 -3(a)	SOLAR FUEL COMPANY PITT 79-200-P January 28, 1980 ALJ - Final 1/80 p155*	Presence of accumulated coal dust, tobacco spit, and odor of urine in change room of mine constitutes violation of 30 CFR §75.1712-3(a) which requires that bathing facilities, change rooms, and sanitary toilet facilities be kept in clean and sanitary condition.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1712 -6	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	
30 CFR 75.1713 -1	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
30 CFR 75.1713 -2	RAVEN MINING COMPANY NORT 79-78 January 23, 1980 ALJ - Final 1/80 p82*	Abatement time of four days given by inspector to comply with 30 CFR §75.1713-2 by installing communication system for medical emergencies was reasonable since operator's failure to have communication system stemmed from fact that operator had not paid telephone bill, which is matter solely in operator's control.
30 CFR 75.1714	KARST-ROBBINS COAL COMPANY BARB 77-115-P March 14, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 75.1714 -2(a)	UNITED STATES STEEL CORPORATION PITT 76-160-P September 17, 1979 RC 9/79 p1306*	Operator violated 30 CFR §75. 1714-2(a) when miners failed to wear self-rescue devices in mine; establishment by operator of self-rescue training program does not constitute compliance with requirement of standard that self-rescue devices be "worn or carried on the person of each miner."
30 CFR 75.1715	CO-OP MINING CO DENV 77-87-P October 10, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1715	CO-OP MINING COMPANY DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
30 CFR 75.1718	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
30 CFR 75.1721 (a)	STANSBURY COAL COMPANY DENV 77-80-P May 16, 1979 ALJ - Final 5/79 p404*	Operator's development of coalbed seam without submission of preliminary plans, including roof control and ventilation plans to MESA district manager, consitutes violation of 30 CFR §75.1721(a), since driving of 20-foot wide entry for about 175 feet and extraction of large block of coal from 8-foot thick seam constitute "development" of coalbed.
30 CFR 75.1722	B B & W COAL COMPANY, INC. PIKE 76-149-P January 9, 1979 ALJ - Final Unbound	
	BIG TEN CORPORATION VA 80-30 August 15, 1980 ALJ - Final 8/80 p2266	Citation for violation of 30 CFR 75.1722 which requires adequate guarding of rollers of underground belt drive must be dismissed when operator's evidence establishes that rollers were adequately guarded by strips of belting and by fence which prevented anyone from gaining access to machinery without removing it.
	DAN BRANCH MINING COMPANY, INC. BARB 77-256-P June 9, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1722	DKT COAL COMPANY KENT 79-349 November 20, 1980 ALJ - Final 10/80 p3336*	Operator violates requirements of 30 CFR 75.1722 when blower motor belts on Lee Norris roof bolter were not properly guarded, because blower motor and belts were located inside six- to 12-inch opening in structures of machine and opening was located near seat of operator's side.
	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY BARB 78-689-P May 7, 1980 ALJ - Final 6/80 p1211*	Using thin piece of wire as guard for clutch coupling of ratio feeder violates 30 CFR §75.1722 which requires that adequate guardings be placed on exposed moving parts because, even if wire were of sufficient tensile strength, guard was still not secured adequately to withstand pressure of fall against it.
	ROYAL DARBY COAL COMPANY, INC. BARB 77-108-P April 19, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	STANSBURY COAL COMPANY DENV 77-80-P May 16, 1979 ALJ - Final 5/79 p404*	Lack of guards on conveyor belt drive pulleys constitutes violation of 30 CFR §75.1722 although inspector did not see belt in operation, since regulation simply requires that drive "shall be guarded," and it is unnecessary that belt drive actually be observed in operation.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1722	UNITED STATES STEEL CORPORATION WEVA 79-172-R June 19, 1980 ALJ - Final 6/80 p1515*	Issuance of withdrawal order for failure to abate violation of 30 CFR §75.1722 (guarding exposed moving machine parts) is justified when evidence shows that violation could have abated within specified time because one portion of violation was abated 20 minutes after order was issued, and inadequate guarding had been installed at another cited location.
30 CFR 75.1722 (a)	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	CLINCHFIELD COAL COMPANY VA 79-66 October 17, 1980 ALJ - Final 10/80 p3026*	Mine operator's action in sending bent guard for sprocket wheel to be repaired or replaced negates claim that guard is unnecessary; consequently, violation of 30 CFR 75.1722(a) is established.
	SEWELL COAL COMPANY HOPE 77-310-P March 28, 1978 ALJ - Final Unbound	
30 CFR 75.1722 (b)	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634	
	NACCO MINING COMPANY VINC 78-22 May 8, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1722 (b)	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 75.1722 (c)	ISLAND CREEK COAL COMPANY HOPE 78-4-P September 21, 1978 ALJ - Final Unbound	
	LECKIE SMOKELESS COAL COMPANY HOPE 78-129-P June 22, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY BARB 78-613-P November 29, 1979 ALJ - Final 11/79 p1928*	Motion to dismiss citation alleging violation of 30 CFR §75.1722(c) is denied, even though documents attached to petition referred to 30 §1722(b), since alleged violation was described with sufficient specificity to permit abatement and preparation of defense, evidence adduced by both parties related solely to §75.1722(c), and company was not prejudiced by amendment to correct errors. Company violated 30 CFR §75.1722 (c), which requires that guards on machinery be "securely in place," since guards were attached with shooting wire rather than thick general utility wire, and tailpiece guards were secured at seven of 12 locations and four of six wires attaching guard to conveyor drive were located at top along length of guard, with none on either side along width of guard.
30 CFR 75.1725	AMHERST COAL COMPANY HOPE 79-128-P February 26, 1980 ALJ - Final 2/80 p597*	Scoop with frozen emergency switch, exposed lead wires, exposed moving universal and no fender over left drive wheel, and coal drill with damaged stop and start switch and disconnected de-energizing device, were not in safe operating condition as required by 30 CFR §75.1725 because conditions exposed miners to serious injury.

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1725	CONSOLIDATION COAL COMPANY WEVA 79-440-R April 28, 1980 ALJ - Final 4/80 p965*	Repairing hose of continuous miner machine while trailing cable attached to machine is plugged into power center violates 30 CFR 75.1725 which provides that repairs shall not be performed on machinery until power is off because even though mechanic making repairs had cut circuit breaker to machine, machine is not de-energized until trailing cable is disconnected from power center.
	LITTLE BILL COAL COMPANY, INC. PIKE 78-308-P December 17, 1980 ALJ - Final 12/80 p3634*	
	PIKEVILLE COAL COMPANY PIKE 77-91-P May 23, 1978 ALJ - Final Unbound	
	PIKEVILLE COAL COMPANY PIKE 78-86-P February 7, 1979 ALJ - Final Unbound	
	SCOTIA COAL MINING COMPANY BARB 78-401-P July 18, 1979 ALJ - Final 7/79 p909*	Evidence that shuttle car steering mechanism had been repaired prior to citation for violation of 30 CFR §75.1725 and inspector's uncertainty as to what he actually saw on day of citation justifies dismissal of petition of assessment of civil penalty. Finding of violation of 30 CFR §75.1725 cannot be sustained when citation charged that violation existed on April 20, but steering mechanism of shuttle car, which was defective on April 19, had been repaired by April 20.
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1725 (a)	BETHLEHEM MINES CORPORATION PITT 77-50-P August 31, 1979 ALJ - Final 8/79 p1280*	Citation for violation of 30 CFR §75.1725(a) for failure to maintain shuttle car in safe operating condition is vacated for lack of showing that mine operator knew or should have known of defect which caused accident.
	CONSOLIDATION COAL COMPANY PENN 79-113 February 28, 1980 ALJ - Final 2/80 p609*	Normal loading of mine cars while operator's mechanic was "troubleshooting" and service car spotter which operator knew was defective and unsafe violated 30 CFR §75.1725(a) requirement that machinery and equipment be maintained in safe operating condition and machinery and equipment in unsafe condition be removed from service immediately.
	GRUNDY MINING COMPANY, INC. BARB 78-168-P June 19, 1978 ALJ - Review Denied & Appealed Unbound	
	MID-CONTINENT COAL & COKE COMPANY DENV 79-29-P October 1, 1979 ALJ - Appealed 10/79 p1501*	Frayed wire cable on airlock door that would not pass through pulley system used in lifting door and missing "keys" in griphoist cranking lever used to raise airlock door constituted violation of 30 CFR §75.1725(a), which requires that mobile and stationary equipment be maintained in safe operating condition.
	THE VALLEY CAMP COAL COMPANY MORG 78-24-P June 22, 1978 ALJ - Final Unbound	
30 CFR 75.1725 (c)	UNITED STATES STEEL CORPORATION PITT 78-430-P November 3, 1980 ALJ - Final 11/80 p3220	

Section of Act/Reg	Case Identification	Summary
30 CFR 75.1726 (a)	BETHLEHEM MINES CORPORATION PENN 80-52-R September 10, 1980 ALJ - Final 9/80 p2564*	Violation of 30 CFR 75.1726(a) is caused by operator's unwarrantable failure to comply under Section 104(d)(1) of Act where section foreman should have known that working on raised portion of mobile equipment which was not blocked securely in place was violation of standard, section foreman was present when violation occurred and failed to exercise reasonable care and due diligence to abate violation, and violation could significantly and substantially contribute to cause and effect of mine safety and health hazard.
30 CFR 75.1801	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
	P M & B COAL COMPANY, INC. MORT 78-13-P June 13, 1978 ALJ - Final Unbound*	
30 CFR 75.1802	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
30 CFR 75.1803	BLACK DIAMOND COAL COMPANY, INC. HOPE 78-117-P December 14, 1978 ALJ - Final Unbound	
30 CFR 77.4	BIB "B" MINING COMPANY PITT 78-389-P September 21, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.102	REPUBLIC STEEL CORPORATION MORG 78-304-P February 5, 1979 ALJ - Final Unbound	
30 CFR 77.104 (b)	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185*	Violations of 30 CFR §77.1004(b) are established by presence of visible cracks at top of highwall a few feet from edge, seam of sand with water running through it which undercut highwall top, and failure to post area of unstable highwall or correct unsafe condition, which may have developed prior to beginning of shift, until immediately prior to issuance of order and by failure to post area where upper portion of highwall had been undercut by groundwater and wall section broke and fell.
30 CFR 77.200	DAVIS COAL COMPANY WEVA 80-309 October 21, 1980 ALJ - Final 10/80 p3053*	
30 CFR 77.202	ALABAMA BY-PRODUCTS CORP BARB 78-512 November 1, 1978 ALJ - Final Unbound	
	ALABAMA BY-PRODUCTS CORPORATION BARB 78-512 November 1, 1978 ALJ - Final Unbound	
30 CFR 77.204 (b)	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.205	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.205 (a)	AMHERST COAL COMPANY HOPE 78-315-P April 5, 1979 ALJ - Final 4/79 p92	
	CRAVAT COAL COMPANY VINC 78-28-P July 7, 1978 ALJ - Final Unbound	
	SUNBEAM COAL CORPORATION PITT 79-210 January 29, 1980 ALJ - Review Denied 1/80 p192*	Failure to provide protective barrier around elevated working platform did not constitute violation of 30 CFR §77.205(a) since standard requires safe access to working areas and MSHA did not establish that access to platform was unsafe.
30 CFR 77.205 (b)	BILL'S COAL COMPANY DENV 78-359-P April 5, 1979 ALJ - Final 4/79 p167*	Presence of certain equipment, items, and coal accumulations on walkways providing only access to two conveyor belts creates stumbling hazards in violation of 30 CFR §77.205(b).
	CRAVAT COAL COMPANY VINC 78-28-P July 7, 1978 ALJ - Final Unbound	
30 CFR 77.205 (e)	BIG TEN CORPORATION VA 80-30 August 15, 1980 ALJ - Final 8/80 p2266	Operator does not violate 30 CFR 77.205(e) by failing to provide toeboards on elevated walkway which has handrails and which has been used for five years without an accident, because regulation requires that toeboards be provided only "where necessary," and walkway was sufficiently safe without toeboards.
	SUNBEAM COAL CORPORATION PITT 79-210 January 29, 1980 ALJ - Review Denied 1/80 p192*	Failure to provide protective barrier around elevated working platform did not constitute violation of 30 CFR §77.205(e) since standard requires handrails on stairways and MSHA did not establish that stairway to platform area was unsafe.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.205 (e)	THE HOKE COMPANY, INC. BARB 79-327-P May 29, 1980 ALJ - Final 3/80 p1156*	Elevated walkway which has handrails made of rope and three-foot gap in handrailing violates 30 CFR §77.205(e), which requires that elevated walkways be of substantial construction, be provided with handrails, and be maintained in good condition, because even though walkway is not used regularly, operator knew that there had been open section left where another walkway might have been tied into cited walkway at future date.
30 CFR 77.206 (a)	THE HOKE COMPANY, INC. BARB 79-327-P May 29, 1980 ALJ - Final 3/80 p1156*	Ladder which is rusted, made of light materials, and has extensive area at top which makes it difficult and dangerous to use constitutes violation of 30 CFR §77.206(a) which requires that ladders be of substantial construction and maintained in good condition.
30 CFR 77.207	CLINCHFIELD COAL COMPANY NORT 78-417-P March 12, 1979 ALJ - Review Denied - Appealed 3/79 p99*	Lack of night-time illumination except cap lamps in surface areas of mine where supplies, railroad tracks, rocks and coal spillage constituted stumbling hazards violating 30 CFR §77.207. Administrative law judge's finding of violation of requirement of 30 CFR §77.207 that sufficient illumination be provided in all working areas is upheld since inspector relied on his informed judgement of what constituted sufficient illumination rather than on agency illumination guidelines alleged to be invalid by operator.
	CONSOLIDATION COAL COMPANY PITT 78-366-P December 18, 1978 ALJ - Final Unbound	
30 CFR 77.208 (d)	COALTRAIN CORPORATION HORG 79-26-P January 23, 1980 ALJ - Show Cause Order 2/80 p511	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.215	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 77.215-1	CO-OP MINING CO DENV 77-87-P October 10, 1978 ALJ - Final Unbound CO-OP MINING COMPANY DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
30 CFR 77.215 (h)	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 77.216-3(a)	MABEN ENERGY CORPORATION WEVA 79-123-R November 30, 1979 ALJ - Review Granted 11/79 p1942	
30 CFR 77.216-3(b)	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 77.400 (a)	BILL'S COAL COMPANY DENV 78-359-P April 5, 1979 ALJ - Final 4/79 p167*	Defense to charge of failure to provide guards for equipment in violation of 30 CFR §77.400(a) and (c), that equipment was being tested, is rejected since no connection was established between absence of guards and operation of the equipment for testing. Failure to guard belt drive pulley of horizontal conveyor and tail pulley of belt conveyor does not establish violations of 30 CFR §77.400(a) and (c), since guards were removed for purposes of repair, some unguarded equipment had been operated for testing purposes only while in its unguarded condition, and other unguarded equipment was inoperative.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.400 (a)	GREAT NATIONAL CORPORATION DENV 77-59-P February 13, 1979 ALJ - Final Unbound*	Secretary's failure to prove that any person would be present in immediate vicinity of exposed coupling located between shafts of hydraulic pump and drive motor so that guard would be necessary to prevent injury requires vacation of notice of 30 CFR §77.400(a).
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-52-P June 26, 1978 ALJ - Final Unbound	
30 CFR 77.400 (c)	BILL'S COAL COMPANY DENV 78-359-P April 5, 1979 ALJ - Final 4/79 p167*	Defense to charge of failure to provide guards for equipment in violation of 30 CFR §77.400(a) and (c), that equipment was being tested, is rejected since no connection was established between absence of guards and operation of the equipment for testing. Failure to guard belt drive pulley of horizontal conveyor and tail pulley of belt conveyor does not establish violations of 30 CFR §77.400(a) and (c), since guards were removed for purposes of repair, some unguarded equipment had been operated for testing purposes only while in its unguarded condition, and other unguarded equipment was inoperative.
	SUNBEAM COAL CORPORATION PITT 79-210 January 29, 1980 ALJ - Review Denied 1/80 p192*	Failure to install guard on head pulley constituted violation of 30 CFR §77.400(c), but violation was not significant and substantial since chain guards were installed at gear box head pulley drive, gear sprocket was guarded, and probability of someone falling into pinch point was remote.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.400 (c)	TEXAS UTILITIES GENERATING COMPANY DENV 79-181-P August 27, 1980 ALJ - Final 8/80 p2413*	Citation for violation of 30 CFR 77.400(c), which requires that guards at conveyor drive pulley extend sufficent distance to prevent person from reaching behind guard and becoming caught in pinch point, must be vacated when cited unguarded area was located in position which would require person to intentionally attempt to reach pinch point in order to do so.
30 CFR 77.400 (d)	GREAT NATIONAL CORPORATION DENV 77-59-P February 13, 1979 ALJ - Final Unbound*	Finding of violation of 30 CFR §77.400(d) cannot be sustained where inspector cannot recall whether there was insufficient guard or no guard at all over conveyor tail pulley and evidence does not establish necessity of guard where hole in shaft was so small that it was almost impossible for person to reach tail pulley.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-52-P June 26, 1978 ALJ - Final Unbound	
30 CFR 77.403 (a)	HOWARD STEPP COAL COMPANY PIKE 78-30-P July 13, 1978 ALJ - Final Unbound	
	N & G CONSTRUCTION, INC. VINC 78-385 October 13, 1978 ALJ - Final Unbound	
	SEQUATCHIE VALLEY COAL CORPORATION BARB 79-152-P September 21, 1979 ALJ - Final 9/79 p1396	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.404	B S K MINING COMPANY, INC. BARB 79-19-P April 29, 1980 ALJ - Final 4/80 p998*	Lack of reliable and substantial evidence of actual equipment defect affecting safety and resulting in accident justifies dismissal of citation for violation of 30 CFR §77.404 which requires that machinery in unsafe condition be removed from service immediately.
	CLINCHFIELD COAL COMPANY NORT 78-387-P December 30, 1980 ALJ - Final 12/80 p3742*	Operator violates requirements of 30 CFR 77.404 (maintenance of equipment) when brake on work deck is out of adjustment, is slipping, and shoes are not holding brake wheel because remaining brakes cannot handle load and defective brake presents safety hazard since displacement of deck, when brakes are applied, could cause employee to fall and injure himself.
30 CFR 77.404 (a)	BUFFALO MINING COMPANY HOPE 78-333-P October 30, 1979 ALJ - Final 10/79 p1740*	
	H & H COAL COMPANY KENT 79-39 February 14, 1980 ALJ - Final 2/80 p443*	Operation of vehicle that had its front, rear and side windows removed, placing driver in danger of being injured by sharp edges of window frames and dust and debris constituted violation of 30 CFR §77.404(a)
	JIM WALTER RESOURCES, INC. BARB 78-448-P November 1, 1978 ALJ - Final Unbound	
	KENNY RICHARDSON BARB 78-600-P July 12, 1979 ALJ - Appealed 7/79 p874	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.404 (a)	PEABODY COAL COMPANY BARB 76-117 July 1, 1980 EC 7/80 p1683*	Existence of bent flange on overhead chain hoist, which caused rollers to lose contact with overhead beam and to fall, constitutes violation of 30 CFR §77.404(a), which requires that machinery be kept in safe condition, regardless of mine operator's knowledge of unsafe condition.
	PEABODY COAL COMPANY CENT 79-335-R March 7, 1980 ALJ - Final 3/80 p659*	Bulldozer kept in service while operator knew of faulty transmission that made operation hazardous was subject to withdrawal order due to unwarrantable failure of operator to comply with 30 CFR §77.404(a) requirement that equipment in unsafe operating condition be removed from service immediately.
	PEABODY COAL COMPANY VINC 77-12-P October 31, 1979 EC 10/79 p1494*	Internal hydraulic leakage in fork lift constituted violation of 30 CFR §77.404(a), which requires that machinery be kept in safe condition, regardless of operator's knowledge of unsafe condition.
	THE HOKE COMPANY, INC. KENT 79-138 February 14, 1980 ALJ - Final 2/80 p451	
30 CFR 77.404 (b)	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.404 (c)	CONSOLIDATION COAL COMPANY PITT 78-479-P December 7, 1978 ALJ - Final Unbound	
30 CFR 77.405 (a)	KENNY RICHARDSON BARB 78-600-P July 12, 1979 ALJ - Appealed 7/79 p874	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.409	GREAT NATIONAL CORPORATION DENV 77-59-P February 13, 1979 ALJ - Final Unbound*	Legal doctrine of res judicata does not require application to case at hand of prior judgment involving identical standard and similar but not identical machinery.
30 CFR 77.409 (b)	GREAT NATIONAL CORPORATION DENV 77-59-P February 13, 1979 ALJ - Final Unbound*	Secretary has not established violation of 30 CFR §77.409(b) where greasing of sheaves by oiler was only activity performed on unguarded roof of dragline.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.410	BURGESS MINING & CONSTRUCTION SE 79-9 September 5, 1980 ALJ - Final 9/80 p2538*	Failure to provide mechanic's truck in pit area with automatic warning device to give audible alarm when truck is put in reverse constitutes violation of 30 CFR 77.410, because standard requires that mobile equipment have automatic backup alarms, standard does not distinguish between various types of trucks, and standard does not specifically incorporate industry interpretation of various terms; accordingly, operator's contentions, that 30 CFR 77.410 is so ambiguous that it should be invalidated and that customary usage of various terms in mining industry should be basis for not applying standards, are rejected. Judge is not bound by March 9, 1978 Mine Safety and Health Administration Surface Manual which provides that backup warning devices need not be provided for moving vehicles where vehicle operator's view directly behind vehicle is not obstructed; if Secretary wishes to circumscribe backup alarm requirement in 30 CFR 77.410, he should follow rulemaking process rather than place change in inspector's manual.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.410	COALTRAIN CORPORATION MORG 79-26-P January 23, 1980 ALJ - Show Cause Order 2/80 p511	
	LEAFCO COMPANY, INC. BARB 78-171-P April 25, 1978 ALJ - Final Unbound	
	MULZER CRUSHED STONE COMPANY VINC 78-3-P April 28, 1978 ALJ - Final Unbound	
	RIVER COAL COMPANY BARB 78-143-P August 1, 1978 ALJ - Final Unbound	
	SEQUATCHIE VALLEY COAL CORPORATION BARB 79-152-P September 21, 1979 ALJ - Final 9/79 p1396	
	SHAMROCK COAL COMPANY BARB 76-656-P July 25, 1979 RC - Appealed 7/79 p799*	Penalty assessment of $75 for violation of 30 CFR §77.410 because of lack of backup alarm on tandem truck hauling soil for U.S. Forest Service is dismissed.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185*	Presence of nonoperational backup alarm on four-wheel-drive buggy constitutes violation of 30 CFR §77.410, since vehicle operator would be unable to see individual immediately behind vehicle if that individual were crouching, kneeling, or on ground.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-537-P June 29, 1979 ALJ - Final 6/79 p706	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.410	THE HOKE COMPANY, INC. KENT 79-138 February 14, 1980 ALJ - Final 2/80 p451	
30 CFR 77.504	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	TEXAS UTILITIES GENERATING COMPANY DENV 79-181-P August 27, 1980 ALJ - Final 8/80 p2413*	Temporary splice in cable, which was used to provide power for both drill press and portable heater, which was made only with friction tape and plastic screw nuts, and which had some insulated lead wires exposed due to gap in outer jacket, constitutes violation of 30 CFR 77.504 which requires that splices in electric conductors be mechanically and electrically efficient, because company could not demonstrate that splice was efficient under varying conditions to which it would be exposed.
30 CFR 77.505	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185*	Failure to secure cable with proper fittings in violation of 30 CFR §77.505 is established by placement of wooden fittings around cable, which were not bolted or clamped to cable, at both points where cable entered circuit breaker frame.
30 CFR 77.506	BIG TEN CORPORATION VA 80-30 August 15, 1980 ALJ - Final 8/80 p2289	
	KENTLAND-ELKHORN COAL CORPORATION PIKE 79-44-P November 28, 1979 ALJ - Final 11/79 p1916	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.507	CONSOLIDATION COAL COMPANY PITT 78-479-P December 7, 1978 ALJ - Final Unbound	
30 CFR 77.512	BILL'S COAL COMPANY DENV 78-359-P April 5, 1979 ALJ - Final 4/79 p167*	Removal of cover plate from junction box located near drive pulley of belt to allow replacement of drive motor on conveyor and opration of belt for testing purposes only while junction box was unguarded does not constitute violation of 30 CFR §77.512, which permits removal of cover plates for testing or repairs.
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 77.513	SUNBEAM COAL CORPORATION PITT 79-210 January 29, 1980 ALJ - Review Denied 1/80 p192*	Failure to provide insulating mat at switch box, coupled with facts that floor was muddy and wet, switch box did not have frame ground, and cable was frayed, constituted significant and substantial violation of 30 CFR §77.513.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.516	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 77.604	CONSOLIDATION COAL COMPANY DENV 79-59 October 30, 1979 ALJ - Final 10/79 p1766*	Violation of 30 CFR §77.604 exists when unprotected trailing cables are "run over" by mobile equipment rather than "damaged" in general, since MSHA's policy statement on standard uses terms "run over" and "damaged" interchangeably and provides that violation occurs when unprotected trailing cables are "run over" by mobile equipment.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.604		Citation for violation of 30 CFR §77.604 is vacated since dragline bucket did not make contact with unprotected trailing cable and MSHA's policy statement interprets standard to require physical contact with cable before violation can be found to have occurred.
	PEABODY COAL COMPANY DENV 78-443-P January 9, 1979 ALJ - Final Unbound*	Secretary's failure to prove trailing cable was not adequately buried to prevent damage from mobile equipment and thus violated 30 CFR §77.604 justified dismissal of petition for assessment of civil penalty.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.701	SUNBEAM COAL CORPORATION PITT 79-210 January 29, 1980 ALJ - Review Denied 1/80 p192*	Operator's claim that another suitable means of grounding switch box was used and that absence of frame ground would not make likelihood of accident imminent is no defense to violation of requirement under 30 CFR §77.701 that metallic frames enclosing electrical equipment be grounded since lack of frame ground could contribute to possible accident. Lack of proper frame ground on switch box, coupled with facts that there was no insulating mat on floor, floor was muddy and wet, outer insulation of cable was "frayed", and switch box was near entrance of shop, constituted significant and substantial violation of 30 CFR §77.701
30 CFR 77.807	PEABODY COAL COMPANY KENT 80-187 October 17, 1980 ALJ - Final 10/80 p2953*	Inspector's personal observation of ripped and torn outer cable jackets is sufficient to establish that high voltage cable was in fact damaged by equipment passing over it at point where it was covered with dirt in violation of 30 CFR 77.807, despite fact that inspector did not pinpoint exact locations where cable damage was discovered.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.807-2	CALL & RAMSEY COAL COMPANY, INC. KENT 79-281 May 14, 1980 ALJ - Final 6/80 p1?37	
30 CFR 77.902	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.1000	CAMBRIA COAL COMPANY PITT 76-108-P October 7, 1980 RC - Affirming 10/80 p2756*	Judge's finding that operator is responsible for conditions on highwall which gave rise to violation of 30 CFR 77.1000, for failure to follow approved ground control plan, is upheld, even though operator argues that it did not create highwall.
30 CFR 77.1001	CONSOLIDATION COAL COMPANY VINC 78-417 January 9, 1979 RC - Denying Petition Unbound	
	CONSOLIDATION COAL COMPANY VINC 78-417 December 1 ,978 ALJ - Appealed Unbound*	Both requirements of 30 CFR §77.1001 were violated where loose, large-sized rocks which fell frequently were not stripped for safe distance from highwall and loose material was not sloped to angle of repose as evidenced by fact that it was not stable. Operator's violation of 30 CFR §77.1001 was extremely serious since it contributed to fatal accident, although gravity of violation must be weighed in light of decedent's unpredictable action in opening bulldozer door while checking tail clearance.
30 CFR 77.1003	HOWARD STEPP COAL COMPANY PIKE 78-30-P July 13, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1004 (b)	OHIO AMCO, INC. LAKE 80-3 October 17, 1980 ALJ - Final 10/80 p2941	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.1006	CONSOLIDATION COAL COMPANY VINC 77-132-P January 22, 1980 RC - Affirmed ALJ 1/80 p3	
30 CFR 77.1102	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.1104	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY DENV 78-500-P December 15, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1104	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185*	Given absence of clean-up program and fire hazard presented, presence of excessive oil spillage and oil soaked rags on and around swing gear case and hydraulic control valves on backhoe, beside operator's cab and in area of hydraulic tanks, constitutes violation of 30 CFR §77.1104.
	THE PITTSBURG & MIDWAY COAL MINING COMPANY WEST 79-127 October 21, 1980 ALJ - Final 10/80 p3049	
30 CFR 77.1105	AMERICAN COAL COMPANY DENV 78-34-P August 7, 1978 ALJ - Final Unbound	
30 CFR 77.1109	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 77.1109 (c)(1)	LEAFCO COMPANY, INC. BARB 78-171-P April 25, 1978 ALJ - Final Unbound	
	MULZER CRUSHED STONE COMPANY VINC 78-3-P April 28, 1978 ALJ - Final Unbound	
	SEQUATCHIE VALLEY COAL CORPORATION BARB 79-152-P September 21, 1979 ALJ - Final 9/79 p1396	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1109 (d)	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
30 CFR 77.1110	MULZER CRUSHED STONE COMPANY VINC 78-3-P April 28, 1978 ALJ - Final Unbound	
	REPUBLIC STEEL CORPORATION MORG 78-304-P February 5, 1979 ALJ - Final Unbound	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.1301	G & M COAL COMPANY SE 79-128 November 19, 1980 ALJ - Final 11/80 p3327	
30 CFR 77.1301 (a)	BURGESS MINING & CONSTRUCTION SE 79-10 September 5, 1980 ALJ - Final 9/80 p2534*	Verb "to store" means "to put aside or accumulate, for use when needed;" accordingly, 30 CFR 77.1301(a), which requires that explosives be stored in magazines, is inapplicable to situation in which caps, primers, and ammonium nitrate fuel oil bags are lying in cargo space of flatbed truck in drilling and hole loading area of coal pit since these articles were not put aside but had been taken from storage magazine, and had been brought to pit area where they were just about to be used.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1301 (a)		Section 1301 of subpart N of regulations deals with explosives when they are not going to be used immediately, Section 1302 deals with transpotation of explosives, and Section 1303 sets forth requirements for handling of explosives as they are about to be used; accordingly, application of 30 CFR 77.1301(a) to case where caps, primers, and ammonium nitrate fuel oil bags are lying in cargo space of flatbed truck in drilling and hole loading area of coal pit would ignore entire scheme and sequence of subpart N. Granting of Secretary's motion to amend petition for civil penalty to substitute 30 CFR 77.1303(f) for 77.1301(a) would deny operator fundamental due process since at hearing operator only defended itself against charge of violating 77.1301(a) and bench decision did not and could not decide that there was violation of 77.1303(f); if citation were amended by Secretary and new petition filed, then operator would be entitled to all of Secretary's prehearing procedures with respect to any alleged violation.
30 CFR 77.1301 (c)(8)	JOHNSON BROTHERS COAL COMPANY, INC. PIKE 79-41-P April 15, 1980 ALJ - Final 4/80 p904*	Leaving magazines used for storage of explosives unlocked and unattended is serious violation of 30 CFR 77.1301(c)(8) even though magazine is located near mine office and likelihood of theft is low.
30 CFR 77.1302 (a)	FLAT TOP MINING, INC. PIKE 79-29-P September 26, 1979 ALJ - Final 9/79 p1410	
30 CFR 77.1302 (b)	THE HOKE COMPANY, INC. KENT 79-138 February 14, 1980 ALJ - Final 2/80 p451	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1303 (d)	ISLAND CREEK COAL COMPANY BARB 78-12-P April 7, 1978 ALJ - Final Unbound*	"Destroyed" in 30 CFR 77.1303(d) means physical demolition; accordingly, deteriorating explosives that must be sent out of mine in separate trailer for pickup by manufacturer are in process of disposition, are headed for destruction, and are not being "destroyed" within meaning of that term in 30 CFR 77.1303(d). MSHA contention that manner in which operator's deteriorated explosives were destroyed was unsafe and improper in violation of of 30 CFR 77.1303(d) because experienced people were not handling or at least supervising handling of explosives as required by 30 CFR 77.1303(a), is rejected, since operator was not charged with violating 30 CFR 77.1303(a) expressly or by inference, allegation was raised for the first time in MSHA brief, and there was no indication that operator was aware that this particular violation was being charged against it; accordingly, operator lacked adequate notification, and there is no evidence that surface foreman was not "experienced" and thus capable of supervising handling of explosives. Secretary does not prove that operator violated 30 CFR 77.1303(d) by failing to destroy deteriorated explosives "in a safe manner" where deteriorated explosives were sitting in yard in trailer, operator had transported them separately out of mine in portable magazine for pickup by manufacturer, and operator handled explosives in manner complying with manufacturer's recommendations.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1303 (f)	BURGESS MINING & CONSTRUCTION SE 79-10 September 5, 1980 ALJ - Final 9/80 p2534*	Granting of Secretary's motion to amend petition for civil penalty to substitute 30 CFR 77.1303(f) for 77.1301(a) would deny operator fundamental due process since at hearing operator only defended itself against charge of violating 77.1301(a) and bench decision did not and could not decide that there was violation of 77.1303(f); if citation were amended by Secretary and new petition filed, then operator would be entitled to all of Secretary's prehearing procedures with respect to any alleged violation.
30 CFR 77.1303 (g)	PEABODY COAL COMPANY DENV 78-557 June 29, 1979 ALJ - Final 6/79 p716*	Hole loaded with explosive and primer but lacking blasting cap or other firing device is not "charged hole" within meaning of 30 CFR §77.1303(g), despite contrary provision of MSHA inspector's manual.
30 CFR 77.1402 -1	BUFFALO MINING COMPANY HOPE 78-333-P October 30, 1979 ALJ - Final 10/79 p1740*	Fact that wire rope was safe is not material to question of whether operator violated 30 CFR §77.1402-1, which requires that ANSI specifications for wire ropes be used as guide in selection and use of wire rope to hoist men; operator's failure to use ANSI specifications as guide constituted violation of standard.
30 CFR 77.1403 (a)	BUFFALO MINING COMPANY HOPE 78-333-P October 30, 1979 ALJ - Final 10/79 p1740*	Citation for violation of 30 CFR §77.1403(a) is vacated since there was no evidence that wire rope that broke causing accident contained numerous broken wires prior to accident as alleged and Secretary's experts believed that rope failure was caused by excessive tension, which could have occurred before accident.
30 CFR 77.1601 (d)	AMAX, INC. DENV 78-300 August 30, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1605 (a)	SEQUATCHIE VALLEY COAL CORPORATION BARB 79-152-P September 21, 1979 ALJ - Final 9/79 p1396	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.1605 (b)	BURGESS MINING & CONSTRUCTION BARB 78-91-P October 5, 1978 ALJ - Final Unbound	
	MIDDLE KENTUCKY CONSTRUCTION, INC. KENT 80-92 September 12, 1980 ALJ - Final 9/80 p2589*	Operator violates provisions of 30 CFR 77.1605(b) when parking brakes on front-end loader are inoperable, and operator's evidence as to how emergency brake system functioned is irrelevant because it is clear that term "parking brake" as used in standard refers to braking system that is separate and independent from service and emergency brakes on loader.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.1605 (d)	ACE DRILLING COAL COMPANY PITT 75-1-P April 24, 1980 RC - Appealed 4/80 p790*	Violation of requirement of 30 CFR §77.1605(d) that horn on front-end loader be operable can be found if violation existed at time it was cited by inspector; it is not necessary that condition exist prior to issuance of citation and contribute to accident.
	CO-OP MINING CO DENV 77-87-P October 10, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1605 (d)	CO-OP MINING COMPANY DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
	MIDDLE KENTUCKY CONSTRUCTION, INC. KENT 80-92 September 12, 1980 ALJ - Final 9/80 p2589*	Explosives truck which has inoperable horn, parking brakes, and service brakes violates provisions of 30 CFR 77.1605(d) and (b), and operator's defense that truck was removed from service prior to inspection must be rejected when evidence established that cited truck was left in drill area and nothing but oral instructions prevented actual use of equipment.
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
	THE HOKE COMPANY, INC. KENT 79-138 February 14, 1980 ALJ - Final 2/80 p451	
30 CFR 77.1605 (k)	BISHOP COAL COMPANY WEVA 80-41 July 14, 1980 ALJ - Final 7/80 p1823*	Small piles of rocks and debris and small metal pipes which are installed by operator as means of preventing overtravel and overturning at dumping locations and along elevated roadways do not satisfy requirements of 30 CFR §§77.1605(k) and (l) which require that adequate berms or guards be installed at these locations.
	BURGESS MINING & CONSTRUCTION BARB 79-255-P August 10, 1979 ALJ - Final 8/79 p1029*	Inspector correctly issued citation for violation of 30 CFR §77: 1605(k) in 1978 since berms were needed on haul road leading to and from mine to alleviate slight hazard which remained despite elimination of hazardous condition on most of road following issuance of citation in 1972.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1605 (k)	BURGESS MINING & CONSTRUCTION SE 79-42 December 10, 1979 ALJ - Review Granted 12/79 p2038	
	COALTRAIN CORPORATION MORG 79-26-P January 23, 1980 ALJ - Show Cause Order 2/80 p511	
	GOLDEN H COAL COMPANY BARB 79-301-P November 5, 1979 ALJ - Final 11/79 p1843*	Operator's failure to provide berms or other protective devices on elevated roadway leading to dumping location violated 30 CFR §77.1605(k), rather than 30 CFR §77.1605(1), which requires similar protection devices for dumping locations, since roadway to dumping location is "roadway" under §77.1605(k) and not part of dumping location.
	PETER WHITE COAL MINING CORPORATION HOPE 77-268 June 29, 1978 ALJ - Final Unbound	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185*	Despite being in pit, 300-foot section of coal haulage roadway at bottom of pit ramp is "roadway" within meaning of 30 CFR §77.1605(k).

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1605 (l)	BISHOP COAL COMPANY WEVA 80-41 July 14, 1980 ALJ - Final 7/80 p1823*	Small piles of rocks and debris and small metal pipes which are installed by operator as means of preventing overtravel and overturning at dumping locations and along elevated roadways do not satisfy requirements of 30 CFR §§77.1605(k) and (l) which require that adequate berms or guards be installed at these locations.
30 CFR 77.1605 (m)	CALL & RAMSEY COAL COMPANY, INC. KENT 80-66 August 14, 1980 ALJ - Final Unbound*	Operator's failure to make track safe, in violation of 30 CFR 77.1605(m), is not associated with high degree of negligence where operator's contract with railway company requires railway to maintain track and reserves to railway "absolute right" of control over use of tracks and roadbed and where accident on track is due to railway's failure to maintain track in safe condition; accordingly, settlement agreement reducing proposed penalty from $1,200 to $900 is approved in light of low degree of negligence and other factors.
	CONSOLIDATION COAL COMPANY VINC 77-122-P July 6, 1978 ALJ - Final Unbound	
30 CFR 77.1606 (c)	BURGESS MINING & CONSTRUCTION SE 80-47 December 5, 1980 ALJ - Final 12/80 p3554	
	CO-OP MINING CO DENV 77-87-P October 10, 1978 ALJ - Final Unbound	
30 CFR 77.1606 (e)	CO-OP MINING COMPANY DENV 77-87-P October 10, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1607 (a)	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.1607 (aa)	PEABODY COAL COMPANY CENT 79-29 May 7, 1980 ALJ - Review Denied 5/80 p1072*	"Trimmed properly" as used in 30 CFR §77.1607(aa) means that excess coal must be removed from haulage trucks which are loaded higher than confines of their cargo space to prevent such coal from falling off trucks, and does not mean that haulage truck may be loaded to its "angle of repose"; therefore, operator violates requirements of section 77.1607(aa) by allowing large chunks of coal on slope above confines of trucks' cargo space without taking proper measures to prevent any chunks of coal from falling out of cargo area.
30 CFR 77.1607 (b)	PETER WHITE COAL MINING CORPORATION HOPE 77-268 June 29, 1978 ALJ - Final Unbound	
30 CFR 77.1607 (c)	PETER WHITE COAL MINING CORPORATION HOPE 77-268 June 29, 1978 ALJ - Final Unbound	
30 CFR 77.1607 (cc)	SUNBEAM COAL CORPORATION PITT 79-210 January 29, 1980 ALJ - Review Denied 1/80 p192*	Citation for violation of requirement under 30 CFR §77.160 (cc) that belt conveyors with walkways be equipped with emergency stop devices is vacated since area cited by inspector was where belt intersected work platform used as maintenance station, and it cannot be concluded that belt conveyor had walkway.
30 CFR 77.1607 (d)	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1607 (n)	TEXAS UTILITIES GENERATING COMPANY DENV 79-181-P August 27, 1980 ALJ - Final 8/80 p2413*	Operator violates provisions of 30 CFR 77.1607(n) when boom truck is left unattended on downhill slope and wheels of truck are not turned into bank or berm, even though brakes on truck are set.
30 CFR 77.1607 (p)	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185 TEXAS UTILITIES GENERATING COMPANY DENV 78-52-P June 26, 1978 ALJ - Final Unbound	
30 CFR 77.1607 (v)	CONSOLIDATION COAL COMPANY PITT 78-366-P December 18, 1978 ALJ - Final Unbound	
30 CFR 77.1607 (y)	CONSOLIDATION COAL COMPANY PITT 78-366-P December 18, 1978 ALJ - Final Unbound	
30 CFR 77.1700	B S K MINING COMPANY, INC. BARB 79-19-P April 29, 1980 ALJ - Final 4/80 p998*	Lack of evidence that employee was working in area where hazardous conditions are present bars finding of violation of 30 CFR §77.1700 even if employee was working alone in area where he could not be seen or heard by others as regulation provides that no employee shall be allowed to work alone in area only where hazardous conditions exist.
30 CFR 77.1702 (c)	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1707 (a)	COALTRAIN CORPORATION MORG 79-26-P January 23, 1980 ALJ - Show Cause Order 2/80 p511	
	GOLDEN R COAL COMPANY KENT 79-124 February 14, 1980 ALJ - Final 2/80 p446*	A preparation plant with three employees is required under 30 CFR §77.1707(a) to have first aid equipment specified in §1707(b).
30 CFR 77.1708	COALTRAIN CORPORATION MORG 79-26-P January 23, 1980 ALJ - Show Cause Order 2/80 p511	
	PEABODY COAL COMPANY VINC 79-67-P March 29, 1979 ALJ - Final 3/79 p179*	Quality of mine operator's safety program is immaterial to question of violation of 30 CFR §77.1708; accordingly, in light of evidence that operator had established ongoing safety program which had been published and distributed to employees and was posted on some, though not all, of mine's bulletin boards, no violation is established.
30 CFR 77.1709	CONSOLIDATION COAL COMPANY PITT 78-366-P December 18, 1978 ALJ - Final Unbound	
30 CFR 77.1710 -1	D K T COAL COMPANY KENT 79-348 August 14, 1980 ALJ - Final 8/80 p2251*	Where operator places order for canopies to be installed on equipment before citation alleging violation of 30 CFR 75.1710-1 is written, and canopies are installed on tractor and scoop before operation of abandoned mine is resumed, operator makes good faith effort to achieve rapid compliance with standard.

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1710 -1	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 77.1710 (a)	SOUTHWESTERN ILLINOIS COAL CORPORATION LAKE 79-53 February 14, 1980 ALJ - Final 2/80 p456*	Inspector's testimony that worker was helping welder to cut metal plate and was two and a half feet from cutting torch without wearing goggles supports finding of violation of 30 CFR §77.1710(a) despite inspector's uncertainty as to exactly what worker was doing when citation was issued and how far inspector was from worker when making observation.
30 CFR 77.1710 (d)	HOWARD STEPP COAL COMPANY PIKE 78-30-P July 13, 1978 ALJ - Final Unbound	
30 CFR 77.1710 (e)	LEAFCO COMPANY, INC. BARB 78-171-P April 25, 1978 ALJ - Final Unbound	
	MIDDLE KENTUCKY CONSTRUCTION, INC. KENT 79-7 May 22, 1980 ALJ - Final 5/80 p1137*	Term "suitable protective footwear" as required by 30 CFR §77.1710(e) must be interpreted in accordance with job that miner is doing so that mechanic or maintenance man must wear steel-toed shoes, as it is probable something might fall and crush his feet.
	MULZER CRUSHED STONE COMPANY VINC 78-3-P April 28, 1978 ALJ - Final Unbound	
30 CFR 77.1710 (g)	KAISER STEEL CORPORATION DENV 77-13-P October 10, 1978 ALJ - Review Granted Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1710 (g)		Operator's failure to require independent contractor's employee to wear safety belt when working on drilling rig mast constituted violation of 30 CFR §77.1710(g).
	PEABODY COAL COMPANY DENV 77-77-P August 30, 1978 ALJ - Final Unbound	
		Operator does not violate 30 CFR 77.1710(g) which requires that miners wear safety belts while working in position where they are liable to fall when evidence establishes that failure to wear safety belt is solely result of employee's disobedience or negligence, rather than lack of requirement by operator to wear them.
	PEABODY COAL COMPANY VINC 79-67-P March 29, 1979 ALJ - Final 3/79 p179*	Operator's failure to establish clear and understandable safety requirement designed to assure that all employees wear safety belts when in danger of falling, together with its failure to enforce such requirement with due diligence, requires finding of violation of 30 CFR §77.1710(g) for employee's working without fall protection on 18-inch-wide gear housing 16 feet above floor. Mine operator's negligent enforcement of its safety belt requirement, illustrated by actions of several employees in climbing to top of gear housing in full view of foreman, warrants increase in penalty proposed by Secretary of Labor for violation of 30 CFR §77.1710(g) from $2,000 to $3,500.
30 CFR 77.1711	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1713	FAULKNER COAL & LEASING KENT 79-146 February 12, 1980 ALJ - Final 3/80 p680	
	SHAMROCK COAL COMPANY BARB 76-656-P June 16, 1978 ALJ - Review Granted Unbound	
30 CFR 77.1713 (a)	LEAFCO COMPANY, INC. BARB 78-171-P April 25, 1978 ALJ - Final Unbound	
	PEABODY COAL COMPANY VINC 77-12-P October 31, 1979 RC 10/79 p1494*	Operator violated 30 CFR §77.1713(a) when mine foreman observed unsecured tire hanging from forklift and was aware of prior accident involving forklift, but failed to correct hazard by insuring tht hydraulic system on forklift was functioning properly or removing forklift from working area.
30 CFR 77.1713 (c)	BILL'S COAL COMPANY DENV 78-359-P April 5, 1979 ALJ - Final 4/79 p167*	Failure to record, in examination record book, stumbling hazards, substantial coal accumulations, escapeway blockage, and instances of unguarded machinery constitutes violation of 30 CFR §77.1713(c).
	TEXAS UTILITIES GENERATING COMPANY DENV 78-51-P April 5, 1979 ALJ - Final 4/79 p185	
30 CFR 77.1903 (a)	COWIN & COMPANY, INC. HOPE 76-210-P October 25, 1978 RC - Appealed Unbound	
30 CFR 77.1903 (b)	COWIN & COMPANY, INC. HOPE 76-210-P October 25, 1978 RC - Appealed Unbound	

Section of Act/Reg	Case Identification	Summary
30 CFR 77.1903 (b)	JIM WALTER RESOURCES, INC. BARB 77-266-P November 21, 1979 RC - Reverse & Remand 11/79 p1827*	Notice of citation did not lack specificity since operators were able to identify and thereby abate allegedly violative condition and were not deprived of notice sufficient to enable them to defend at hearing.
30 CFR 77.1903 (c)	COWIN & COMPANY, INC. HOPE 76-210-P October 25, 1978 RC - Appealed Unbound	
30 CFR 77.1904	REPUBLIC STEEL CORPORATION MORG 78-304-P February 5, 1979 ALJ - Final Unbound	
30 CFR 77.1905 (b)	COWIN & COMPANY, INC. HOPE 76-210-P October 25, 1978 RC - Appealed Unbound	
30 CFR 77.1906 (a)	COWIN & COMPANY, INC. HOPE 76-210-P October 25, 1978 RC - Appealed Unbound	
30 CFR 80.32	SHAMROCK COAL COMPANY BARB 78-82-P October 30, 1978 ALJ - Review Granted Unbound	
	TRIPLE T COAL COMPANY, INC. NORT 78-317-P May 30, 1979 ALJ - Final 5/79 p429	
30 CFR 90.40	UNITED STATES STEEL CORPORATION HOPE 79-251 May 2, 1979 ALJ - Final 5/79 p358	

Section of Act/Reg	Case Identification	Summary
30 CFR 100	CO-OP MINING COMPANY DENV 75-207 April 21, 1980 RC 4/80 p784*	Administrative law judge, in de novo determination of amount of civil penalty, is not bound by formulas provided in 30 CFR §100, which govern method of computation utilized by MESA's Office of Assessments.
	NEW HAVEN TRAP ROCK-TOMASSO WILK 79-63-PM June 5, 1979 ALJ - Final 6/79 p504	
30 CFR 100.3(i)	DESKINS BRANCH COAL COMPANY PIKE 78-329-P August 16, 1978 ALJ - Motion to Remand to A.O. 5/79 p401	
30 CFR 100.5	EASTERN ASSOCIATED COAL CORPORATION WEVA 80-120-R May 20, 1980 ALJ - Final 6/80 p1242	
30 CFR 100.6	EASTERN ASSOCIATED COAL CORPORATION WEVA 80-120-R May 20, 1980 ALJ - Final 6/80 p1242	
30 CFR 100.6(b)	J P BURROUGHS & SON, INC. LAKE 80-223-M June 27, 1980 ALJ - Review Granted 7/80 p1707	
30 CFR 100.7(d)	CONSOLIDATION COAL COMPANY VINC 77-132-P January 22, 1980 RC 1/80 p3*	Dismissal of operator's motion, after request for hearing, to have administrative law judge accept payment of proposed penalty and dismiss case is affirmed, since amount of penalty is triable issue and judge may determine amount of penalty on de novo basis.

Section of Act/Reg	Case Identification	Summary
30 CFR 100.8	MATHIES COAL COMPANY PITT 77-39-P May 5, 1978 ALJ - Final Unbound	
43 CFR 4.450	ALABAMA BY-PRODUCTS CORPORATION BARB 78-146-P September 21, 1978 ALJ - Final Unbound	
43 CFR 4.454(c)	CONSOLIDATION COAL COMPANY VINC 77-132-P January 22, 1980 RC 1/80 p3*	Dismissal of operator's motion, after request for hearing, to have administrative law judge accept payment of proposed penalty and dismiss case is affirmed, since amount of penalty is triable issue and judge may determine amount of penalty on de novo basis.
43 CFR 4.507(e)	PEABODY COAL COMPANY VINC 78-1 December 13, 1978 ALJ - Final Unbound	
43 CFR 4.540	CRAVAT COAL COMPANY VINC 78-28-P July 7, 1978 ALJ - Final Unbound	
43 CFR 4.544	BETSY-ANN COAL COMPANY NORT 76-252-P June 13, 1978 ALJ - Final Unbound	
43 CFR 4.544(b)	B B & W COAL COMPANY, INC. PIKE 77-89-P June 7, 1979 RC - Reverse & Remand 6/79 p467*	Operator's mailing of summary of reasons for desiring hearing to judges' office and submission of letter to Solicitor of Labor refusing to accept Solicitor's proposed stipulation constituted adequate response to judge's pretrial order and warrants reversal of default order issued for failure to so respond.
43 CFR 4.544(c)	SEWELL COAL COMPANY HOPE 77-310-P March 28, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
43 CFR 4.545(c)	CONSOLIDATION COAL COMPANY VINC 77-132-P January 22, 1980 RC - Affirmed ALJ 1/80 p3	
43 CFR 4.590(b)	PEABODY COAL COMPANY DENV 77-77-P August 30, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
PA	AGGREGATE MATERIALS CORPORATION LAKE 80-152-M October 6, 1980 ALJ - Final 10/80 p2858	
	AMBER COAL COMPANY, INC. KENT 79-104 August 14, 1980 ALJ - Final 8/80 p2242	
	B B & W COAL COMPANY, INC. PIKE 77-89-P August 27, 1980 ALJ - Final 8/80 p2354	
	B B & W COAL COMPANY, INC. PIKE 78-62-P October 11, 1978 ALJ - Final Unbound	
	BETH ANN COAL CORPORATION NORT 79-18-P September 25, 1979 ALJ - Final 9/79 p1403	
	BIB "B" MINING COMPANY PITT 78-389-P September 21, 1978 ALJ - Final Unbound	
	BILL W STODDARD, ET AL, MINING COMPANY DENV 78-527-P June 26, 1979 ALJ - Final 6/79 p629	

Section of Act/Reg	Case Identification	Summary
PA	BILLY MOON TRUCKING COMPANY, INC. SE 79-86 October 17, 1980 ALJ - Final 10/80 p3016	
	C & K COAL COMPANY PENN 79-60 June 12, 1980 ALJ - Review Granted 6/80 p1410	
	C F & I STEEL CORPORATION DENV 77-79-P March 29, 1979 ALJ - Stay Order 3/79 P175	
	CEDAR COAL COMPANY WEVA 80-106 March 27, 1980 ALJ - Final 3/80 p746	
	CONSOLIDATION COAL COMPANY PENN 80-19 March 19, 1980 ALJ - Final 3/80 p738	
	CONSOLIDATION COAL COMPANY WEVA 80-145 April 2, 1980 ALJ - Final 4/80 p796	

Section of Act/Reg	Case Identification	Summary
PA	CONTINENTAL OIL COMPANY DENV 79-554-PM October 29, 1980 ALJ - Final 10/80 p3165*	
	CRD COAL COMPANY, INC. PIKE 79-58-P August 14, 1980 ALJ - Final 8/80 p2247*	Proposed total penalties of $1,532 for seven violations of mandatory health and safety standards have no deterrent effect on operator which is no longer in coal business and which does not contemplate reentry into coal business; since operator is unable to pay penalties, penalty of $1.00 is assessed for each violation.
	CUT SLATE, INC. WILK 79-13-PM August 13, 1979 ALJ - On Remand 8/79 p1039	
	DERBY GRANITE, INC. WILK 79-24-PM October 9, 1980 ALJ - Final 10/80 p2900	
	EASTERN ASSOCIATED COAL CORPORATION HOPE 78-208-P July 11, 1978 ALJ - Final Unbound	
	EASTERN ASSOCIATED COAL CORPORATION MORG 78-314-P April 13, 1979 ALJ - Final 4/79 p229	
	ELY FUEL COMPANY KENT 79-4 June 25, 1980 ALJ - Final 6/80 p1614	
	EMPIRE ENERGY CORPORATION WILK 79-4-PM February 13, 1979 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
PA	ENERGY FUELS CORPORATION DENV 78-421 April 4, 1979 ALJ - Final 4/79 p89	
	FIRE CREEK COAL COMPANY OF TENNESSEE BARB 79-264-P July 2, 1979 ALJ - Final 7/79 p801	
	GARRCO COAL COMPANY, INC. KENT 79-37 September 26, 1980 ALJ - Final 9/80 p2693	
	GEORGE F PETTINOS, INC. WILK 79-83-PM August 7, 1979 ALJ - Final 8/79 p1000	
	GREAT NATIONAL CORPORATION DENV 79-189-P December 28, 1979 ALJ - Final 12/79 p2126	
	H & L COAL COMPANY, INC. BARB 78-169-P August 11, 1978 ALJ - Final Unbound	
	H S JACKSON SAND & GRAVEL, INC. CENT 80-259-M September 30, 1980 ALJ - Final 9/80 p2743	
	HECLA MINING COMPANY DENV 79-91-PM September 5, 1979 ALJ - Final 9/79 p1332	

Section of Act/Reg	Case Identification	Summary
PA	HI TEMP, INC. BARB 79-69-P November 19, 1980 ALJ - Final 11/80 p3307	
	HOWARD STEPP COAL COMPANY PIKE 78-30-P July 13, 1978 ALJ - Final Unbound	
	HYANNIS SAND & GRAVEL, INC. YORK 80-39-M June 12, 1980 ALJ - Final 6/80 p1401	
	J SANTORO, INC. WILK 79-103-PM October 6, 1980 ALJ - Final 10/80 p2853	
	JIM WALTER RESOURCES, INC. BARB 78-448-P November 1, 1978 ALJ - Final Unbound	
	JOHN R SAND AND GRAVEL LAKE 80-158-M October 15, 1980 ALJ - Final 10/80 p2925	
	KAISER STEEL CORPORATION DENV 79-340-P May 25, 1979 ALJ - Final 5/79 p422	
	KANAWHA COAL COMPANY HOPE 78-189-P June 22, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
PA	KENNECOTT COPPER CORPORATION DENV 79-404-PM November 18, 1979 ALJ - Final 11/79 p1901	
	KENTUCKY BLUE COAL COMPANY BARB 79-260-P October 5, 1979 ALJ - Final 10/79 p1569	
	KITT COAL COMPANY, INC. PITT 78-142-P July 10, 1978 ALJ - Final Unbound	
	KNOX COUNTY STONE COMPANY, INC. DENV 79-359-PM July 23, 1979 ALJ - Review Granted 8/80 p2134	
	L E MURPHY CONSTRUCTION VINC 79-38-PM May 30, 1979 ALJ - Final 5/79 p425	
	LEAFCO COMPANY, INC. BARB 78-171-P May 11, 1978 ALJ - Final Unbound	
	MAGMA COPPER COMPANY DENV 79-452-PM March 26, 1980 ALJ - Final 3/80 p744	
	MARTIN MARIETTA AGGREGATES CENT 79-171-M July 16, 1980 ALJ - Final 7/80 p1834	

Section of Act/Reg	Case Identification	Summary
PA	MARY BETH COAL COMPANY BARB 79-113-P March 30, 1979 ALJ - Final 3/79 p209	
	NEW HAVEN TRAP ROCK-TOMASSO WILK 79-63-PM June 5, 1979 ALJ - Final 6/79 p504	
	NOTO EXCAVATING, INC. YORK 79-104-M June 27, 1980 ALJ - Final 6/80 p1676	
	PEABODY COAL COMPANY DENV 78-576-P March 30, 1979 ALJ - Amendment 3/79 p207	
	PEABODY COAL COMPANY DENV 79-79-P April 30, 1979 ALJ - Final 4/79 p295	
	PEERLESS EAGLE COAL COMPANY HOPE 79-145-P September 27, 1979 ALJ - Final 9/79 p1448	
	PEGGS RUN COAL COMPANY, INC. PITT 78-132-P June 22, 1978 ALJ - Final Unbound	
	PENNSYLVANIA GLASS SAND CORPORATION WEVA 80-61-M October 17, 1980 ALJ - Final 10/80 p2930	

Section of Act/Reg	Case Identification	Summary
PA	PIKEVILLE COAL COMPANY KENT 79-105 February 6, 1980 ALJ - Final 2/80 p301	
	PONTIKI COAL CORPORATION PIKE 78-420-P February 11, 1980 ALJ - Final 2/80 p368	
	QUARTO MINING COMPANY VINC 78-83-P June 8, 1978 ALJ - Final Unbound	
	RIVERSIDE CEMENT COMPANY WEST 79-98-M December 18, 1979 ALJ - Final 12/79 p2064	
	SHADE COAL COMPANY WILK 78-301-P August 25, 1978 ALJ - Final Unbound	
	SOUTH DAKOTA CEMENT PLANT CENT 80-297-M October 16, 1980 ALJ - Final 10/80 p2928	
	SUE-JAN COAL COMPANY BARB 79-117-P April 30, 1979 ALJ - Final 4/79 p292	
	TACEY TRANSPORT CORPORATION YORK 80-68-M November 14, 1980 ALJ - Final 11/80 p3293	

Section of Act/Reg	Case Identification	Summary
PA	THE PITTSBURG & MIDWAY COAL MINING COMPANY DENV 79-327-P October 17, 1979 ALJ - Final 10/79 p1632	
	UNITED STATES STEEL CORPORATION PITT 76X232-P January 10, 1980 Commission: ALJ - Affirmed 1/80 p1	
	WASHINGTON CONSTRUCTION COMPANY DENV 79-288-PM October 5, 1979 ALJ - Final 10/79 p1561	
	WILLIAMS, INC., AND/OR MR. W. R. WILLIAMS DENV 79-39-PM June 25, 1979 ALJ - Final 6/79 p624	
	WOLF CREEK COLLIERIES COMPANY PIKE 78-70-P May 4, 1979 ALJ - Final 5/79 p365	
PS	ALABAMA FUEL COMPANY & BIG FORK MINING COMPANY HOPE 78-403-P September 5, 1978 ALJ - Final Unbound	
	ALLIED CHEMICAL CORPORATION LAKE 79-234-M October 18, 1979 ALJ - Final 10/79 p1633	
	BISHOP COAL COMPANY HOPE 78-111-P July 31, 1978 ALJ - Final Unbound	

Section of Act/Reg	Case Identification	Summary
PS	BLUE ROCK INDUSTRIES WILK 79-11-PM April 23, 1979 ALJ - Final 4/79 p254	
	BOYLE AIRE COAL COMPANY BARB 79-76-P July 25, 1979 ALJ - Final 7/79 p934	
	BUCKEYE COAL MINING COMPANY, INC. LAKE 79-109 February 13, 1980 ALJ - Final 2/80 p438	
	C C C POMPEY COAL COMPANY, INC. PIKE 78-342-P December 15, 1978 ALJ - Final Unbound	
	C J RUST CONSTRUCTION COMPANY KENT 79-302 August 27, 1980 ALJ - Final 8/80 p2445	
	CARBON FUEL COMPANY HOPE 78-623-P October 15, 1979 ALJ - Final 10/79 p1609	
	CENTRAL PRE-MIX CONCRETE COMPANY WEST 80-325-M September 19, 1980 ALJ - Final 10/80 p2825	
	CLEMENS COAL COMPANY CENT 79-32 June 19, 1980 ALJ - Final 6/80 p1511	

Section of Act/Reg	Case Identification	Summary
PS	CO-OP MINING COMPANY DENV 79-1-P October 16, 1979 ALJ - Final 10/79 p1612	
	COAL RESOURCES, INC. WEVA 80-323 July 28, 1980 ALJ - Final 7/80 p1973	
	COALTRAIN CORPORATION MORG 79-26-P February 21, 1980 ALJ - Review Granted 2/80 p510	
	CONSOLIDATION COAL COMPANY HOPE 78-569-P October 15, 1979 ALJ - Final 10/79 p1606	
	CONSOLIDATION COAL COMPANY MORG 78-320-P August 17, 1978 ALJ - Final Unbound	
	CONSOLIDATION COAL COMPANY MORG 78-339-P September 29, 1978 ALJ - Final 12/79 p2147	
	CONSOLIDATION COAL COMPANY MORG 79-56-P June 13, 1979 ALJ - Final 6/79 p533	
	CONSOLIDATION COAL COMPANY MORG 79-63-P June 19, 1979 ALJ - Final 6/79 p597	

Section of Act/Reg	Case Identification	Summary
PS	CONSOLIDATION COAL COMPANY PENN 79-10 September 17, 1979 ALJ - Final 9/79 p1345	
	CONSOLIDATION COAL COMPANY PENN 79-11 September 4, 1979 ALJ - Final 9/79 p1330	
	CONSOLIDATION COAL COMPANY PENN 79-2 September 17, 1979 ALJ - Final 9/79 p1347	
	CONSOLIDATION COAL COMPANY PITT 79-191-P September 7, 1979 ALJ - Final 9/79 p1340	
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APPENDIX I: ABBREVIATIONS

ALJ	Administrative Law Judge
BNA	The Bureau of National Affairs
BMOA	Board of Mine Operations Appeals, U.S. Department of Interior (Administrative Review Authority for decisions arising under the 1969 Act)
CFR	Code of Federal Regulations
Cir	Circuit
d/b/a	doing business as — unincorporated "company" name, under which a person does business
DC	District of Columbia
FMSHRC	Federal Mine Safety and Health Review Commission
IBMA	Interior Board of Mine Operations Appeals
MESA	Mining Enforcement and Safety Administration, U.S. Department of Interior (predecessor agency of MSHA)
MSHA	Mine Safety and Health Administration, U.S. Department of Labor
NCO	Non-Commission Origin - a case in a Federal Court which did not arise because of an appeal of a Commission decision or an ALJ decision
PA	Penalty Assessment - decision about amount of penalty - cf 77:110(i) and 69:109(a)(1)
PS	Penalty settlement - judicial review of proposed settlement - cf 29 CFR 2700.27 (d)
RC	Review Commission - The Federal Mine Safety and Health Review Commission as a whole

Unbound means that the decision was published prior to the initiation of the practice of issuing collections of decisions in bound volumes.

Unpublished means that the decision (one outside FMSHRC) was public but not printed for public release.

66: The Federal Metal and Nonmetallic Mine Safety Act of 1966

69: The Federal Coal Mine Health and Safety Act of 1969

77: The Federal Mine Safety and Health Act of 1977

1 FMSHRC 1831 (1979) Format for reference to a case published in the FMSHRC "Decisions" (Blue Books), e.g., Volume 1 (1979) page 1831.

2 MSHC 1065 Format for reference to a case published by The Bureau of National Affairs, e.g., "Mine Safety and Health Cases," Volume 2 page 1065.

8 IBMA 98 (1977) Format for reference to a case published in the Interior Board of Mine Operations, e.g., Volume 8, (1977) page 98.

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